



0000205195

**BEFORE THE ARIZONA CORPORATION COMMISSION****COMMISSIONERS**

Arizona Corporation Commission

DOCKETED

LEA MÁRQUEZ PETERSON - Chairwoman  
SANDRA D. KENNEDY  
JUSTIN OLSON  
ANNA TOVAR  
JIM O'CONNOR

NOV 5 2021

DOCKETED BY

IN THE MATTER OF:

DOCKET NO. S-21091A-19-0332

WILLIAM MELVIN HAWKINS a.k.a. MEL  
HAWKINS (CRD# 831356), and

BIOMED PHARMA GROUP, INC., a Panama  
corporation,

DECISION NO. **78292**

Respondents.

**OPINION AND ORDER**

DATE OF HEARING:

October 27 and 28, 2020

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Yvette B. Kinsey

APPEARANCES:

Mr. William Melvin Hawkins, *pro per*, and

Mr. Christopher Nichols, Staff Attorney, on behalf of the  
Securities Division of the Arizona Corporation  
Commission.

**BY THE COMMISSION:****Procedural History**

On December 31, 2019, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, and Order for Administrative Penalties ("Notice") against William Melvin Hawkins a.k.a. Mel Hawkins (CRD#831356) ("Respondent Hawkins" or "Mr. Hawkins") and Biomed Pharma Group, Inc. ("Biomed") (collectively "Respondents"), for engaging in or are about to engage in acts, practices, and transactions that constitute violations of A.R.S. § 44-1801 *et seq.*, the Arizona Securities Act ("Securities Act").

On December 2, 2020, the Division filed Affidavits of Service showing Respondent Hawkins and Biomed had each been served with copies of the Notice on January 30, 2020.

1 On February 3, 2020, Respondent Hawkins filed a Request for Hearing pursuant to A.R.S. §§  
2 44-1972 and 44-3212, and Arizona Administrative Code (“A.A.C.”) R14-4-306, on behalf of himself  
3 and Biomed.<sup>1</sup>

4 On February 6, 2020, by Procedural Order, a pre-hearing conference was scheduled for March  
5 4, 2020, to discuss potential dates for a hearing.

6 On March 4, 2020, the pre-hearing conference was held as scheduled. The Division appeared  
7 through counsel and Respondent Hawkins appeared on his own behalf. Biomed did not appear. A  
8 discussion was held regarding setting a procedural schedule for this matter.

9 On March 9, 2020, by Procedural Order, a hearing in this matter was scheduled to commence  
10 on September 15, 2020, and other procedural deadlines were established.

11 On July 15, 2020, Respondent Hawkins filed a Redacted List of Witnesses and Exhibits.

12 On August 17, 2020, by Procedural Order, a telephonic pre-hearing conference was scheduled  
13 to be held on August 24, 2020, to discuss the best way to proceed with the hearing in this matter in  
14 light of the precautions being taken to address the COVID-19 pandemic.

15 On August 24, 2020, the telephonic pre-hearing conference was held as scheduled. The Division  
16 appeared through counsel. Respondent Hawkins appeared on his own behalf. Biomed did not appear.  
17 Discussions were held regarding the possible need for a virtual or a partially virtual hearing. The  
18 Division requested an in-person hearing due to the limited number of witnesses it intended to call.  
19 Respondent Hawkins stated he was not opposed to an in-person hearing with one witness attending in  
20 the courtroom and another possible witness appearing via video conferencing.

21 On August 25, 2020, by Procedural Order, the hearing scheduled for September 15, 2020, was  
22 confirmed and safety guidelines for the in-person hearing were established.

23 On September 15, 2020, the hearing was held as scheduled before a duly authorized  
24 Administrative Law Judge (“ALJ”) for the Commission. Respondent Hawkins was present on his own  
25 behalf. The Division appeared through counsel. Biomed did not appear. Before testimony was taken,  
26 the Division advised the ALJ that Respondent Hawkins had attempted to subpoena a witness in this

27 <sup>1</sup> Although Respondent Hawkins filed a request for hearing on behalf of himself and Biomed, Respondent Hawkins did not  
28 demonstrate that he could represent Biomed in compliance with Arizona Supreme Court Rule 31, regarding the practice of  
law.

1 matter, but that a court of jurisdiction in Louisiana quashed the subpoena, upon motion by the witness  
2 alleging that the subpoena was deficient. Respondent Hawkins requested a continuance of the hearing  
3 to allow him to reissue the subpoena. It was decided that the hearing in this matter would be continued  
4 and rescheduled to begin on October 27, 2020, to allow Respondent Hawkins time to subpoena the  
5 witness. Respondent Hawkins was also informed that the hearing would be held on the new date even  
6 if he failed to successfully subpoena the witness.

7 On September 16, 2020, by Procedural Order, the hearing was continued and rescheduled to  
8 begin on October 27, 2020.

9 On October 27, 2020, a full public hearing was held as scheduled. Respondent Hawkins was  
10 present on his own behalf. Biomed did not appear. The Division appeared through counsel. Testimony  
11 was heard and evidence was admitted. The matter was taken under advisement pending the submission  
12 of closing briefs.

13 On October 30, 2020, by Procedural Order, a briefing schedule was established directing the  
14 filing of the Division's Initial Brief on December 21, 2020, Respondent Hawkins' Responsive Brief on  
15 January 21, 2021, and the Division's Reply Brief on February 4, 2021.

16 On December 21, 2020, the Division filed its Post-Hearing Brief.

17 On January 20, 2021, Respondent Hawkins filed a Response to the Division's Post-Hearing  
18 Brief.

19 On February 1, 2021, the Division filed a Post-Hearing Reply Brief.

20 On February 4, 2021, Respondent Hawkins filed a Response to the Division's Post-Hearing  
21 Brief Response ("Surreply").

22 On February 9, 2021, the Division filed a Motion to Strike Hawkins' Surreply. The Division's  
23 Motion requested that Respondent's Surreply be stricken as it was not authorized by the Procedural  
24 Order issued on October 30, 2020.

25 On March 1, 2021, by Procedural Order, the Division's Motion was granted.

26 ...

27 ...

28 ...

**DISCUSSION****I. Brief Summary**

This matter comes before the Commission as an enforcement action brought against the Respondents for alleged violations of the Securities Act. The action brought against Respondents Melvin Hawkins and Biomed alleges that Respondents offered and sold unregistered securities in the form of shares of stock, within or from Arizona, to at least one investor [Mary Horn] in exchange for at least \$283,630, while not registered as dealers or salesmen, in violation of A.R.S. §§ 44-1841 and 44-1842.

The Division also alleges that Respondent Hawkins committed fraud in violation of A.R.S. § 44-1991, by failing to disclose, *inter alia*, that he was prohibited from selling securities under a previous Commission Consent Order and that the Consent Order required him to pay more than \$1,000,000 in restitution.

The Division requests that Respondents be ordered to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. § 44-2032. The Division also requests that Respondent Hawkins be ordered to pay, jointly and severally with Biomed, restitution in the amount of \$243,630, pursuant to A.R.S. § 44-2032. The Division further requests that Respondent Hawkins be ordered to pay, jointly and severally with Biomed, administrative penalties in the amount of \$25,000, pursuant to A.R.S. § 44-2036.

Respondent Hawkins denies selling unregistered shares of Biomed to Ms. Horn and denies that he committed fraud. Respondent Hawkins request that he not be held liable for restitution and administrative penalties.

**II. Uncontested Facts<sup>2</sup>**

The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Act.<sup>3</sup>

Respondent Hawkins has been a resident of Arizona at all relevant times.<sup>4</sup>

<sup>2</sup> A.A.C. R14-3-106(H) states in part that: "All answers shall be full and complete and shall admit or deny specially and in detail each allegation of the complaint which such answer is directed." These facts were either admitted by Respondent Hawkins or not denied in his Answer.

<sup>3</sup> Notice ¶ 1.

<sup>4</sup> Notice ¶ 2.



From approximately October 1984 through December 1994, May 2000 through October 2002, and May 2003 through September 2005, Respondent Hawkins was registered with the Commission as a securities salesman in association with various securities dealers.<sup>5</sup>

On February 1, 2007, the Commission issued an Order to Cease and Desist, Order of Restitution, Order of Revocation, Order of Administrative Penalties, and Consent to Same ("2007 Consent Order") in the matter of William Melvin Hawkins and Meta Funding, LLC, Docket No. S-20470A-06-0531.<sup>6</sup>

Pursuant to the 2007 Consent Order, the Commission:

- Ordered Hawkins to cease and desist from violating the Securities Act;
- Revoked Hawkins' salesman registration;
- Ordered Hawkins to pay \$1,284,900 in restitution and \$25,000 in administrative penalties;
- Ordered Hawkins to refrain from selling securities in or from Arizona unless both he and the securities were registered with the Commission; and
- Ordered that Hawkins could not exercise any control over an entity that offers or sells securities within or from Arizona, until he had fully paid the restitution and penalties imposed by the Consent Order.<sup>7</sup>

Respondent Hawkins has not been registered or licensed with the Commission in any capacity since his registration was revoked.<sup>8</sup>

Upon information and belief, Biomed is a corporation organized under the laws of the country of Panama in 2008.<sup>9</sup>

Biomed has never been registered or licensed with the Commission in any capacity.<sup>10</sup>

Respondent Hawkins and Biomed may be referred to collectively as "Respondents."<sup>11</sup>

Respondent Hawkins told the investor [Ms. Horn] that he had invested in the company, Biomed Pharma Group, Inc.<sup>12</sup>

<sup>5</sup> Notice ¶ 3.

<sup>6</sup> Notice ¶ 4. *See*, Decision No. 69291 (February 1, 2007). The Respondent William Melvin Hawkins is the same Respondent in this proceeding.

<sup>7</sup> Notice ¶ 6.

<sup>8</sup> Notice ¶ 8.

<sup>9</sup> Notice ¶ 9.

<sup>10</sup> Notice ¶ 10.

<sup>11</sup> Notice ¶ 12.

<sup>12</sup> Notice ¶ 16.

1 Other than the voting rights associated with her shares of stock, the investor [Ms. Horn] had no  
2 ability to control or manage the operations of Biomed.<sup>13</sup>

3 The Investment Agreement was accompanied by an Addendum which stated, “[t]he purpose of  
4 this Addendum is to attempt to provide [Ms. Horn] an additional degree of security in regard to the  
5 funds she is expending to purchase Biomed stock.”<sup>14</sup>

6 The Addendum specified that the investor would make an initial payment of \$165,000, and a  
7 second payment at the discretion of Respondent Hawkins after the first payment had been  
8 “exhausted.”<sup>15</sup>

9 The Addendum also stated, “Mel Hawkins, principal of Biomed, also commits to make a [sic]  
10 best efforts to repay [Mary Horn] personally if liquidation of Biomed assets do not provide a full  
11 restitution of her dollars she has invested.”<sup>16</sup>

12 The Investment Agreement and Addendum were both executed by Respondent Hawkins on  
13 behalf of Biomed.<sup>17</sup>

14 Between April 14, 2014, and June 25, 2014, the investor invested a total of \$165,000 in Biomed  
15 by wiring funds to its bank account in Panama.<sup>18</sup>

16 The investor continued to invest in Biomed through March 2015, investing a total of  
17 \$283,630.<sup>19</sup>

18 As of the date of the Notice, Respondent Hawkins has returned only \$40,000 of the investor’s  
19 money.<sup>20</sup>

### 20 **III. Witness Testimony**

#### 21 **Special Investigator Karen Gerdes (“Investigator Gerdes” or “Ms. Gerdes”)**

22 Ms. Gerdes testified that she has been employed as a Special Investigator with the Division for  
23 over two years.<sup>21</sup> She testified that her job duties include investigating securities fraud and violations

24 <sup>13</sup> Notice ¶ 20.

25 <sup>14</sup> Notice ¶ 21.

26 <sup>15</sup> Notice ¶ 22.

27 <sup>16</sup> Notice ¶ 23.

28 <sup>17</sup> Notice ¶ 24.

<sup>18</sup> Notice ¶ 27.

<sup>19</sup> Notice ¶ 28.

<sup>20</sup> Notice ¶ 29.

<sup>21</sup> Tr. at 17-18.

1 of the Securities Act, interviewing witnesses, victims, investors, and investigative leads as well as  
 2 issuing subpoenas to gather evidence.<sup>22</sup> Ms. Gerdes testified that she maintains all of the evidence and  
 3 documents in her case files.<sup>23</sup>

4 Ms. Gerdes testified that prior to being employed by the Division she was a Phoenix police  
 5 officer for over 20 years, where she worked for 10 years in patrol and 10 years as a detective  
 6 investigating domestic violence crimes.<sup>24</sup> She testified that during her tenure with the police department  
 7 she generated police reports, interviewed victims and witnesses, interrogated suspects, maintained case  
 8 files, and collected evidence.<sup>25</sup> Ms. Gerdes also testified that during her time working patrol she was  
 9 occasionally called to respond to cases involving financial crimes.<sup>26</sup>

10 Ms. Gerdes testified that the Hawkins/Biomed matter was assigned to her on approximately  
 11 May 8, 2018.<sup>27</sup> As part of her duties, Ms. Gerdes stated that she maintained a case file on the  
 12 Hawkins/Biomed matter by collecting evidence, uploading evidence or documents to a computer  
 13 system and by keeping a hard copy of the information.<sup>28</sup>

14 Investigator Gerdes testified that Tim Nelson, an attorney for Mary Horn, the investor,  
 15 contacted the Commission regarding concerns that Mr. Hawkins was selling Ms. Horn securities.<sup>29</sup> Ms.  
 16 Gerdes testified that she contacted Mr. Nelson to obtain an interview with Ms. Horn.<sup>30</sup> She testified  
 17 that she was informed by Mr. Nelson that an attorney by the name of Don Wiener was now handling  
 18 Ms. Horn's case, so Ms. Gerdes contacted Mr. Wiener to obtain an interview with Ms. Horn.<sup>31</sup>

19 During her initial research, Ms. Gerdes testified that she found a prior case with the Commission  
 20 from 2007 that involved a company called Mathon Funding ("Mathon").<sup>32</sup> Investigator Gerdes testified  
 21 that the respondents in the case were William Melvin Hawkins and Meta Funding, LLC.<sup>33</sup> She testified  
 22

---

23 <sup>22</sup> Tr. at 18.

24 <sup>23</sup> *Id.*

25 <sup>24</sup> *Id.* at 18-19.

26 <sup>25</sup> *Id.*

27 <sup>26</sup> *Id.* at 19.

28 <sup>27</sup> *Id.*

29 <sup>28</sup> *Id.* at 20.

30 <sup>29</sup> *Id.*

31 <sup>30</sup> *Id.* at 20-21.

32 <sup>31</sup> *Id.* at 21.

33 <sup>32</sup> *Id.*, Exh. S-4.

<sup>33</sup> Tr. at 26.

1 that the Commission Order in that matter stated that Hawkins violated A.R.S. § 44-1841 by offering or  
 2 selling securities that were not registered or exempt from registration, ordered that respondents  
 3 permanently cease and desist from selling securities in or from Arizona unless the securities are  
 4 registered or exempt.<sup>34</sup> Ms. Gerdes further testified that the respondents were ordered to pay restitution  
 5 of \$1,284,900, administrative penalties of \$25,000 and Mr. Hawkins' securities salesman registration  
 6 was revoked.<sup>35</sup> She also testified that the Order prohibited Mr. Hawkins from exercising any control  
 7 over any entity that offers or sells securities within or from the state of Arizona until restitution and  
 8 administrative penalties are paid in full.<sup>36</sup> Investigator Gerdes testified that the Order also prohibited  
 9 Mr. Hawkins from selling any securities in or from Arizona without being properly registered in  
 10 Arizona as well as he is prohibited from selling any security in or from Arizona that is not registered  
 11 or exempt.<sup>37</sup>

12 Ms. Gerdes testified that Mr. Hawkins has not been registered with the Commission to sell  
 13 securities since his registration was revoked in 2007.<sup>38</sup>

14 Investigator Gerdes testified that Mr. Hawkins is not in compliance with his restitution and  
 15 penalty obligations under the 2007 Consent Order.<sup>39</sup> Ms. Gerdes testified that according to the  
 16 Commission's accounting department Mr. Hawkins and META Funding, LLC have paid \$128,768.82  
 17 in restitution and that over \$1 million is still owed not including interest.<sup>40</sup>

18 Ms. Gerdes testified that as part of her investigation she searched for Biomed on eCorp, an  
 19 electronic filing system for business registration.<sup>41</sup> She testified that her research showed that Biomed  
 20 attempted to register to do business in Arizona and that Biomed listed Mr. Hawkins' name and home  
 21 address as its business address.<sup>42</sup> She testified that no other people were listed for Biomed.<sup>43</sup>  
 22 Investigator Gerdes also testified that she used the internet to Google and search OpenCorporates [for  
 23

---

24 <sup>34</sup> Tr. at 26-27.

25 <sup>35</sup> Tr. at 27-28.

26 <sup>36</sup> Tr. at 28.

27 <sup>37</sup> Tr. at 29.

28 <sup>38</sup> *Id.* at 29, Exh. S-2.

<sup>39</sup> Tr. at 31, Exh. S-5.

<sup>40</sup> Tr. at 32, Exh S-5.

<sup>41</sup> Tr. at 32-33.

<sup>42</sup> Tr. at 33.

<sup>43</sup> *Id.*

1 Biomed] and she discovered that Biomed was incorporated in Panama.<sup>44</sup> She testified that Biomed has  
 2 never been registered or licensed with the Commission as a securities salesman or dealer or investment  
 3 advisor.<sup>45</sup> She also testified that Biomed never registered its stock with the Commission as a security.<sup>46</sup>

4 Investigator Gerdes testified that she interviewed Mary Horn for the first time with her attorney,  
 5 Don Weiner, on the line.<sup>47</sup> Ms. Gerdes described Ms. Horn as “an elderly widow.”<sup>48</sup> Ms. Gerdes  
 6 testified that she would not describe Ms. Horn as “sophisticated” when it comes to investing because  
 7 Ms. Horn told her that her late husband, Robert Edward Horn, did all the finances and investments for  
 8 the family.<sup>49</sup>

9 Investigator Gerdes testified that Ms. Horn’s attorney, Mr. Weiner, stated that Ms. Horn didn’t  
 10 want to testify in this proceeding because “she gets violently ill and she can’t breathe, and she is  
 11 extremely upset about this [proceeding], stressed, shocked and embarrassed.”<sup>50</sup>

12 Ms. Gerdes testified that Ms. Horn said she invested in Biomed.<sup>51</sup> Investigator Gerdes testified  
 13 that Ms. Horn said that she invested in Biomed after she ran into Mr. Hawkins after her mother’s  
 14 funeral.<sup>52</sup> Ms. Gerdes testified that Ms. Horn said she continued to talk to Mr. Hawkins after the funeral  
 15 and that he told her about Biomed and that he said it was a good investment and that Ms. Horn could  
 16 invest in Biomed if she would like.<sup>53</sup>

17 Investigator Gerdes testified that Ms. Horn started investing in Biomed in 2014.<sup>54</sup> Ms. Gerdes  
 18 testified that Ms. Horn was living in Louisiana when she began investing in Biomed and that she  
 19 purchased a home in Arizona at the end of 2014.<sup>55</sup> Investigator Gerdes testified that Ms. Horn  
 20 communicated with Mr. Hawkins via phone and email and that it was Ms. Horn’s understanding that  
 21 Mr. Hawkins was in Arizona during those conversations.<sup>56</sup> Ms. Gerdes testified that Ms. Horn stated

---

22 <sup>44</sup> Tr. at 33-34.

23 <sup>45</sup> Tr. at 34, Exh. S-1.

24 <sup>46</sup> *Id.*

24 <sup>47</sup> Tr. at 36.

24 <sup>48</sup> *Id.*

25 <sup>49</sup> *Id.*

25 <sup>50</sup> Tr. at 37.

26 <sup>51</sup> *Id.*

26 <sup>52</sup> *Id.*

27 <sup>53</sup> *Id.* at 37-38.

27 <sup>54</sup> Tr. at 38.

28 <sup>55</sup> *Id.*

28 <sup>56</sup> *Id.*



1 during her conversations with Mr. Hawkins, he told her that Biomed produced human growth hormone  
 2 (“HGH”) that made people feel younger, feel better, get rid of wrinkles and provide more energy.<sup>57</sup>  
 3 Investigator Gerdes testified that Ms. Horn stated that Mr. Hawkins told her the return on her  
 4 investment would be “ridiculous” and that she understood Biomed would sell HGH to make the money  
 5 to pay those returns.<sup>58</sup>

6 Ms. Gerdes testified that Ms. Horn received offering documents and an Investment Agreement  
 7 related to Biomed from Mr. Hawkins, before she invested.<sup>59</sup> Investigator Gerdes testified that the  
 8 Division obtained the documents from Mr. Don Weiner, Ms. Horn’s attorney, and they included an  
 9 offering document and an investment agreement between Biomed and a Harold Burke.<sup>60</sup> Ms. Gerdes  
 10 testified that the documents pertained to Biomed and included an executive summary dated December  
 11 31, 2013, and stated that Biomed was incorporated in 2008, in Panama.<sup>61</sup> Investigator Gerdes testified  
 12 that the document stated that James Maxfield and W. Mel Hawkins are the founders of Biomed.<sup>62</sup> Ms.  
 13 Gerdes testified that the documents included an investment agreement between Biomed and Harold J.  
 14 Burke, and indicated that Mr. Harold Burke would invest \$320,000 in return for 3,375 common shares  
 15 in Biomed.<sup>63</sup> Investigator Gerdes testified that she tried to locate and make contact with Mr. Harold J.  
 16 Burke, but that she was unable to locate or contact him.<sup>64</sup>

17 Investigator Gerdes testified that the Division received another similar offering document for  
 18 Biomed from Ms. Horn’s attorney.<sup>65</sup> Ms. Gerdes testified that the executive summary for this offering  
 19 document was dated March 8, 2014, listed Biomed as being incorporated in Panama, and listed Mel  
 20 Hawkins and James Maxfield as the founders.<sup>66</sup> Ms. Gerdes testified that the funding section of the  
 21 document stated that the company is seeking additional funding and offers an ownership position  
 22 through purchasing common shares representing 30 percent of the company for a total of \$325,000.<sup>67</sup>

---

23 <sup>57</sup> Tr. at 39.

24 <sup>58</sup> *Id.*

25 <sup>59</sup> Tr. at 39-41, Exh. S-6.

26 <sup>60</sup> Tr. at 41-42.

27 <sup>61</sup> Tr. at 44, Exh. S-6, ACC000229.

28 <sup>62</sup> Tr. at 44.

<sup>63</sup> Tr. at 44, Exh. S-6.

<sup>64</sup> Tr. at 45.

<sup>65</sup> Tr. at 45, Exh. S-7.

<sup>66</sup> Tr. at 46, Exh. S-7, ACC000188.

<sup>67</sup> Tr. at 47, Exh. S-7, ACC000190



1 She also testified that attached to the document was a sample investment agreement that showed Mel  
2 Hawkins was the person expected to execute the investment agreement on behalf of Biomed.<sup>68</sup>

3 Ms. Gerdes testified that Ms. Horn's attorney provided the Division with the Investment  
4 Agreement between Ms. Horn and Biomed.<sup>69</sup> She testified that the agreement states Ms. Horn would  
5 receive 6,957 common shares of Biomed, 40 percent ownership, in exchange for Ms. Horn's investment  
6 of \$325,000.<sup>70</sup> Ms. Gerdes testified that the Investment Agreement shows that Ms. Horn executed the  
7 agreement on April 14, 2014, and that Mr. Hawkins executed the agreement on behalf of Biomed.<sup>71</sup>  
8 She also testified that an Addendum to the Investment Agreement set forth a funding schedule and  
9 stated that the first payment was to be \$165,000 and that once that amount was exhausted Mr. Hawkins  
10 would analyze Biomed's position to determine whether Biomed could reach its ultimate objective of  
11 production and sales.<sup>72</sup> Investigator Gerdes testified that according to the document, payment was to  
12 made by wire transfer to Credicorp Bank in Panama.<sup>73</sup> Ms. Gerdes testified that the Addendum stated  
13 that its purpose is to "attempt to provide Mary [Ms. Horn] an additional degree of security in regards  
14 to the funds she is expending to purchase Biomed stock."<sup>74</sup> Ms. Gerdes also testified that the document  
15 contained another section titled "further commitment" which states that Mr. Hawkins is the principal  
16 of Biomed, and that he commits to make a best effort to repay Mary [Ms. Horn] personally if liquidation  
17 of Biomed assets do not provide full restitution to her of the dollars she had invested.<sup>75</sup> Ms. Gerdes  
18 testified that the Investment Agreement acknowledged that Mr. Hawkins was not in a financial position  
19 to repay Ms. Horn at the time it was executed.<sup>76</sup> Ms. Gerdes testified that Ms. Horn's Investment  
20 Agreement did not disclose that Mr. Hawkins has a restitution order against him, that Mr. Hawkins  
21 owes over \$1 million in restitution and penalties, or that Mr. Hawkins was violating the 2007 Consent  
22 Order by entering into the Investment Agreement.<sup>77</sup>

23  
24 <sup>68</sup> Tr. at 47, Exh. S-7, ACC000194-195.

25 <sup>69</sup> Tr. at 47, Exh. S-8.

26 <sup>70</sup> Tr. at 48, Exh. S-8.

27 <sup>71</sup> Tr. at 49.

28 <sup>72</sup> Tr. at 49-50.

<sup>73</sup> Tr. at 48-49.

<sup>74</sup> Tr. at 50.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 51.

Investigator Gerdes testified that Ms. Horn's attorney provided the Division with an email dated April 14, 2014, from Mr. Hawkins to Ms. Horn.<sup>78</sup> Investigator Gerdes testified that the email contained information regarding the amounts due for rent on a lab and maintenance costs in the amount of \$35,000.<sup>79</sup> Ms. Gerdes testified that in the email Mr. Hawkins requests Ms. Horn make an investment of \$35,000 to cover the expenses.<sup>80</sup>

Investigator Gerdes testified that the Division received a document from Ms. Horn's attorney that contained wiring instructions and showed Credicorp Bank in Panama as the beneficiary.<sup>81</sup> Ms. Gerdes testified that Credicorp Bank is consistent with the information that was provided in the offering document.<sup>82</sup> Investigator Gerdes also testified that the document listed Biomed as the beneficiary on the wiring instructions.<sup>83</sup>

Ms. Gerdes testified that the Division received an outgoing international wire transfer form from Ms. Horn's attorney.<sup>84</sup> Ms. Gerdes testified that the form was from MidSouth Bank and was dated April 14, 2014.<sup>85</sup> Investigator Gerdes testified that April 14, 2014, was the same date as the email communication from Mr. Hawkins to Ms. Horn, in which Mr. Hawkins requested Ms. Horn make a \$35,000 investment, and the same date and amount listed in Ms. Horn's investment agreement.<sup>86</sup> Ms. Gerdes testified that the wire transfer document showed that the wire originated from the bank account of Robert and Mary Horn and provided the last four digits of the account number.<sup>87</sup> Investigator Gerdes testified that Ms. Horn confirmed that Robert Horn was her late husband.<sup>88</sup> Ms. Gerdes testified that the wire transfer document listed Credicorp Bank as the beneficiary bank, Biomed as the beneficiary, and stated that the purpose of the wire transfer was "investments".<sup>89</sup>

Investigator Gerdes testified that she received a wire transfer receipt from Ms. Horn's attorney

---

<sup>78</sup> Tr. at 51-52, Exh. S-9.

<sup>79</sup> Tr. at 52.

<sup>80</sup> *Id.*

<sup>81</sup> Tr. at 53, Exh. S-10.

<sup>82</sup> *Id.*

<sup>83</sup> Tr. at 53-54, Exh. S-10.

<sup>84</sup> Tr. at 54, Exh. S-11.

<sup>85</sup> *Id.*

<sup>86</sup> Tr. at 55.

<sup>87</sup> *Id.* at 55, Exh. S-11.

<sup>88</sup> Tr. at 55.

<sup>89</sup> Tr. at 55-56, Exh. S-11.

1 showing Ms. Horn's investments through April 29, 2014.<sup>90</sup> Ms. Gerdes testified that the wiring receipt  
 2 was issued from MidSouth Bank for \$65,000, from the account of Mrs. Horn's late husband, that  
 3 Biomed was the recipient, and that the pick-up location was Credicorp Bank.<sup>91</sup> Investigator Gerdes  
 4 also testified that she received a MidSouth Bank spreadsheet from Ms. Horn's attorney that showed  
 5 both the \$35,000 and \$65,000 investment from Robert and Mary Horn's account were sent to Biomed  
 6 as of April 28, 2014.<sup>92</sup>

7 Ms. Gerdes testified that she received several emails from Ms. Horn's attorney that were from  
 8 Respondent Hawkins.<sup>93</sup> Investigator Gerdes testified that one of the emails was dated April 14, 2014,  
 9 and was addressed to all Biomed shareholders.<sup>94</sup> Ms. Gerdes testified that Ms. Horn made her first  
 10 investment on April 14, 2014.<sup>95</sup> Investigator Gerdes testified that the email was from Mr. Hawkins and  
 11 that it indicates a new shareholder has been located and that the shareholder is going to invest \$325,000  
 12 instead of the \$425,000 originally agreed to, and that if the company does not make it, this new investor  
 13 would be paid first, at 100 percent, before other shareholders are reimbursed.<sup>96</sup> Ms. Gerdes testified  
 14 that the correspondence asked that a response be returned to Respondent Hawkins.<sup>97</sup>

15 Investigator Gerdes testified that Mr. Hawkins was the only person Ms. Horn communicated  
 16 with regarding Biomed.<sup>98</sup> Ms. Gerdes testified that Ms. Horn said she made multiple investments in  
 17 Biomed through wire transfer.<sup>99</sup> Ms. Gerdes testified that Ms. Horn said she made additional  
 18 investments because Mr. Hawkins told her the company [Biomed] needed more money and that she  
 19 did not receive additional shares [of Biomed] every time she invested.<sup>100</sup> Investigator Gerdes testified  
 20 that after Ms. Horn invested she learned that Mr. Hawkins had a previous issue with the Commission  
 21 [2007 Consent Order] and that she was not aware until after she invested that Mr. Hawkins had lost his  
 22

---

23 <sup>90</sup> Tr. at 58-59, Exh. S-12.

24 <sup>91</sup> Tr. at 59.

25 <sup>92</sup> Tr. at 60-61, Exh. S-13.

26 <sup>93</sup> Tr. at 56, Exh. S-18.

27 <sup>94</sup> Tr. at 57.

28 <sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 58.

<sup>98</sup> Tr. at 40.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

1 license to sell securities.<sup>101</sup> Ms. Gerdes testified that Ms. Horn did not continue to make investments  
2 after she learned about the 2007 Consent Order.<sup>102</sup>

3 Investigator Gerdes testified that Ms. Horn's attorney provided documents related to an  
4 additional \$65,000 investment made by Ms. Horn on June 18, 2014. Ms. Gerdes testified that she  
5 received a prepayment disclosure form and a receipt disclosure form from Community Trust Bank,  
6 dated June 18, 2014, showing a transfer in the amount of \$65,000 from Ms. Horn to Biomed.<sup>103</sup>

7 Ms. Gerdes testified that she received a stock certificate from Ms. Horn's attorney showing that  
8 Ms. Horn owns 6,960 shares of Biomed, which is consistent with Ms. Horn's investment agreement.<sup>104</sup>

9 Investigator Gerdes testified that she received a spreadsheet from Ms. Horn's attorney that had  
10 been prepared by Respondent Hawkins that showed both the \$35,000 and the \$65,000 wire transfers  
11 from Ms. Horn to Biomed.<sup>105</sup> Ms. Gerdes testified that she believed the spreadsheets were prepared by  
12 Respondent Hawkins because Ms. Horn had stated that he was the only person she received documents  
13 from [related to the investments] and that the dates on the spreadsheet correspond with the bank records  
14 Investigator Gerdes received related to the investments.<sup>106</sup>

15 Ms. Gerdes testified that she received an email correspondence dated October 6, 2014, from  
16 Ms. Horn's attorney, in which Respondent Hawkins appears to request that Ms. Horn provide an  
17 additional \$25,000 investment.<sup>107</sup> Investigator Gerdes testified that the email appears to show Ms.  
18 Horn's total investment, (including the additional \$25,000 requested), was \$214,015.<sup>108</sup> Ms. Gerdes  
19 testified that she received a stock certificate from Ms. Horn's attorney, dated October 7, 2014, showing  
20 Ms. Horn had received two shares of Biomed stock, but Investigator Gerdes testified that she was  
21 unable to specifically determine why the additional two shares were issued to Ms. Horn.<sup>109</sup>

22 Investigator Gerdes testified that she received, from Ms. Horn's attorney, a wire transfer request  
23

---

24 <sup>101</sup> Tr. at 40.

25 <sup>102</sup> *Id.* at 41.

26 <sup>103</sup> Tr. at 61-63, Exhs. S-15, S-16.

27 <sup>104</sup> Tr. at 64, Exh. S-14.

28 <sup>105</sup> Tr. at 66.

<sup>106</sup> Tr. at 65-66, Exh. S-17.

<sup>107</sup> Tr. at 67, Exh. S-19.

<sup>108</sup> *Id.*

<sup>109</sup> Tr. at 68-69, Exh. S-20.

1 from Community Trust Bank to Credit Union West, dated October 8, 2014, in the amount of \$25,000.<sup>110</sup>  
2 Ms. Gerdes testified that the wire transfer request document shows that the wire was from Pelican  
3 Gaming, Inc. and Ms. Horn.<sup>111</sup> She also testified that Ms. Horn told her that Pelican Gaming, Inc. was  
4 a company she owned with her late husband.<sup>112</sup> Investigator Gerdes testified that the wire transfer  
5 request was two days after Ms. Horn received the email in which Respondent Hawkins appears to  
6 request the additional \$25,000 investment.<sup>113</sup>

7 Investigator Gerdes testified that she received another email correspondence from Ms. Horn's  
8 attorney.<sup>114</sup> Ms. Gerdes testified that Respondent Hawkins forwarded to Ms. Horn on October 16,  
9 2014, an email exchange that directed a wire transfer in the amount of \$18,000.<sup>115</sup>

10 Ms. Gerdes testified that among the documents provided by Ms. Horn through her attorney was  
11 a fax transmittal dated October 16, 2014, sent by Ms. Horn to Community Trust Bank, requesting that  
12 they wire transfer \$18,000 to the same bank address provided by Respondent Hawkins in the email  
13 sent to Ms. Horn on the same date.<sup>116</sup>

14 Investigator Gerdes testified that Ms. Horn's attorney provided the Division with a spreadsheet  
15 sent by Respondent Hawkins to Ms. Horn showing the date, bank, amount and reason for each of Ms.  
16 Horn's investments.<sup>117</sup> Ms. Gerdes testified that the amounts in the spreadsheet are consistent with the  
17 amounts of Ms. Horn's investments and the dates on which they were made.<sup>118</sup>

18 Investigator Gerdes testified that she received from Ms. Horn's attorney, a document entitled  
19 "Contributions to Biomed and Expenditures by Biomed in Panama, 2014."<sup>119</sup> Ms. Gerdes testified that  
20 it was her understanding that Ms. Horn obtained the document from Respondent Hawkins and that the  
21 contributions [attributed to Ms. Horn] in the document are consistent with information obtained from  
22

---

23 <sup>110</sup> Tr. at 69-70, Exh. S-21.

24 <sup>111</sup> Tr. at 70.

25 <sup>112</sup> *Id.*

26 <sup>113</sup> *Id.* at 70, Exh. S-19.

27 <sup>114</sup> Tr. at 71, Exh. S-22.

28 <sup>115</sup> Tr. at 71-72, Exh. S-22.

<sup>116</sup> Tr. at 74-75, Exh. S-23

<sup>117</sup> Tr. at 77, Exh. S-24.

<sup>118</sup> Tr. at 77-78. Ms. Gerdes testified that she believes "MSB" stands for MidSouth Bank and "CTB" stands for Community Trust Bank on the spreadsheet.

<sup>119</sup> Tr. at 78, Exh. S-25.

1 other sources.<sup>120</sup>

2 Investigator Gerdes testified that she received from Ms. Horn's attorney, a general ledger for  
3 the year 2015 for Biomed in Panama.<sup>121</sup> Investigator Gerdes believes Ms. Horn obtained the document  
4 from Respondent Hawkins and that its shows that from inception through December 31, 2014, Ms.  
5 Horn made investments in the amount of \$183,000.<sup>122</sup> Investigator Gerdes testified that based on the  
6 documents and information she obtained during her investigation she believes the \$183,000 is  
7 comprised of a \$65,000, \$35,000, a second investment of \$65,000, and a single investment of \$18,000  
8 made by Ms. Horn.<sup>123</sup> Ms. Gerdes testified that the 2015 ledger does not include an additional \$25,000  
9 investment made by Ms. Horn because the funds were wired directly to Respondent Hawkins in  
10 Arizona.<sup>124</sup>

11 Ms. Gerdes testified that Ms. Horn's attorney provided an email correspondence that contained  
12 the financial statements [general ledger] for Arizona Biomed 2015.<sup>125</sup> Investigator Gerdes testified that  
13 document states beginning 2015 Ms. Horn had contributed \$218,006.87.<sup>126</sup> Ms. Gerdes also testified  
14 that the document states that as of the end of February 2015 Ms. Horn's total contributions were  
15 \$234,438.39.<sup>127</sup> Investigator Gerdes testified that as of December 31, 2014 Ms. Horn had made  
16 contributions totaling \$183,000 to Panama.<sup>128</sup>

17 Investigator Gerdes testified that she received a Biomed 2015 Arizona general ledger from Ms.  
18 Horn's attorney.<sup>129</sup> Ms. Gerdes testified that the document shows Ms. Horn's total contributions to be  
19 \$240,863.35.<sup>130</sup>

20 Investigator Gerdes testified that she received a second Biomed 2015 Arizona general ledger  
21 from Ms. Horn's attorney.<sup>131</sup> Ms. Gerdes testified that the general ledger states that Ms. Horn's total  
22

---

23 <sup>120</sup> Tr. at 79, Exh. S-25.

24 <sup>121</sup> Tr. at 80, Exh. S-26

25 <sup>122</sup> Tr. at 80.

26 <sup>123</sup> Tr. at 80-81.

27 <sup>124</sup> Tr. at 81.

28 <sup>125</sup> Tr. at 81-82, Exh. S-27.

<sup>126</sup> Tr. at 83, Exh. S-27.

<sup>127</sup> Tr. at 83.

<sup>128</sup> Tr. at 83, Exh. S-27, ACC 208.

<sup>129</sup> Tr. at 84, Exh. S-28.

<sup>130</sup> Tr. at 85, Exh. S-28 at ACC000211.

<sup>131</sup> Tr. at 85-86, Exh. S-29.



1 contributions were \$250,409.56.<sup>132</sup> Investigator Gerdes also testified that the document shows an  
2 additional \$40,000 investment that was made on March 3, 2015.<sup>133</sup>

3 Ms. Gerdes testified that Ms. Horn stated that she became aware of the Commission's 2007  
4 Consent Order against Respondent Hawkins after her son contacted her attorney.<sup>134</sup> Investigator Gerdes  
5 testified that Ms. Horn stated her son was concerned about the amount of money she was giving to  
6 Respondent Hawkins and that Ms. Horn had purchased a house in Arizona soon after meeting  
7 Respondent Hawkins.<sup>135</sup>

8 Investigator Gerdes testified that in an email sent from Respondent Hawkins to Ms. Horn on  
9 March 24, 2015, Respondent Hawkins states that [under the 2007 Consent Order] he owes \$525,000  
10 in restitution.<sup>136</sup> Investigator Gerdes testified that based on her investigation, the statement made by  
11 Respondent Hawkins about the amount of restitution owed under the 2007 Consent Order was  
12 inaccurate and that Respondent Hawkins still owes over \$1 million in restitution.<sup>137</sup> Investigator  
13 Gerdes also testified that Respondent Hawkins attached to the email, a letter he purportedly sent to the  
14 real estate licensing agency explaining why he entered into the 2007 Consent Order and stating that the  
15 ACC "went after him" because he had a Series 7 license.<sup>138</sup> Ms. Gerdes testified that in that same letter  
16 Respondent Hawkins describes Mathon as a "scam and Ponzi scheme" that he got his friends to invest  
17 in.<sup>139</sup>

18 Investigator Gerdes testified that she received from Ms. Horn's attorney a document that  
19 contained an email chain set from Respondent Hawkins to Ms. Horn on March 26, 2015.<sup>140</sup> Ms. Gerdes  
20 testified that in the email chain Respondent Hawkins, "belittles Ms. Horn, calls her weak, insults her  
21 son, indicates that he didn't do anything wrong, and that it's her family's fault, and basically explains  
22 away the consent order."<sup>141</sup> Investigator Gerdes testified that in the email Respondent Hawkins does

23  
24 <sup>132</sup> Tr. at 86, Exh. S-29 at ACC000210.

25 <sup>133</sup> Tr. at 86.

26 <sup>134</sup> Tr. at 87.

27 <sup>135</sup> *Id.*

28 <sup>136</sup> Tr. at 88, Exh. S-30 at ACC000157.

<sup>137</sup> Tr. at 89.

<sup>138</sup> Tr. at 89, Exh. S-30 at ACC000158-159.

<sup>139</sup> Tr. at 89-90, Exh. S-30 at ACC000158-159

<sup>140</sup> Tr. at 90, Exh. S-31.

<sup>141</sup> *Id.*

1 not state that he told Ms. Horn long ago about the 2007 Consent Order and does not seem confused as  
 2 to why Ms. Horn would bring up the 2007 Consent Order.<sup>142</sup> Ms. Gerdes testified that it appears from  
 3 the email that Ms. Horn had only recently found out about the 2007 Consent Order.<sup>143</sup>

4 Investigator Gerdes testified that she received an email from Ms. Horn's attorney that was sent  
 5 to him by Ms. Horn in which she expresses embarrassment and shock about the situation.<sup>144</sup> Ms. Gerdes  
 6 testified that in that same email Ms. Horn states that she has 6,962 shares of Biomed, that she has  
 7 invested approximately \$285,000 in Biomed, that she committed to investing \$325,000 in Biomed, that  
 8 Respondent Hawkins is requesting that she take a lesser position amounting to a 30-percent interest so  
 9 that he can regain some shares from her to resell them to generate additional money for Biomed, and  
 10 that those regained shares would be for potential new investors.<sup>145</sup> Investigator Gerdes testified that  
 11 Ms. Horn's statement that she has 6,962 shares is consistent with the stock certificates and that her  
 12 statement committing to invest \$325,000 is consistent with the investment contract in this matter.<sup>146</sup>

13 Ms. Gerdes testified that she received a document from Ms. Horn's attorney that included an  
 14 email exchange.<sup>147</sup> Investigator Gerdes testified that in an email dated April 13, 2015, from Respondent  
 15 Hawkins to Ms. Horn, Respondent Hawkins states that Ms. Horn has invested \$283,630, he confirms  
 16 that Ms. Horn committed to invest \$325,000, he states he agreed to the high number of shares given to  
 17 Ms. Horn,<sup>148</sup> that he agreed to prefund the shares even though Ms. Horn was investing over time, and  
 18 that he offered Ms. Horn "exceptional" pricing.<sup>149</sup> Investigator Gerdes testified that in the same email,  
 19 Respondent Hawkins proposes to reduce Ms. Horn's ownership to 30 percent of the authorized shares  
 20 and that she return 1,733 shares back to Biomed.<sup>150</sup>

21 Investigator Gerdes testified that she received, from Ms. Horn's attorney, an email chain dated  
 22 June 3, 2015, from Respondent Hawkins to Ms. Horn.<sup>151</sup> Ms. Gerdes testified that in the emails

---

24 <sup>142</sup> Tr. at 91.

25 <sup>143</sup> *Id.*

26 <sup>144</sup> Tr. at 92, Exh. S-32.

27 <sup>145</sup> Tr. at 93-94, Exh. S-32.

28 <sup>146</sup> Tr. at 93-94.

<sup>147</sup> Tr. at 95, Exh. S-33.

<sup>148</sup> Tr. at 96-97, Exh. S-33 at ACC000181.

<sup>149</sup> Tr. at 95-96, Exh. S-33.

<sup>150</sup> Tr. at 97, Exh. S-33.

<sup>151</sup> Tr. at 98, Exh. S-34.

1 Respondent Hawkins states that he can return \$40,000 of Ms. Horn's investment by the following week  
2 and that in return Ms. Horn would return Biomed shares to Respondent Hawkins.<sup>152</sup>

3 Investigator Gerdes testified that she received an email from Ms. Horn's attorney which was  
4 sent by Respondent Hawkins to Ms. Horn, requesting that she provide him with the name and phone  
5 number of her attorney who was handling her case involving Biomed, so that he can send the \$40,000  
6 to her attorney or to her personally.<sup>153</sup> Ms. Gerdes testified that Ms. Horn confirmed that she did  
7 receive the \$40,000 from Respondent Hawkins, but that no other investment funds have been  
8 returned.<sup>154</sup>

9 Investigator Gerdes testified that through a subpoena, the Division obtained bank statements  
10 for Respondent Hawkins' Credit Union West Bank for an account.<sup>155</sup> Ms. Gerdes testified that the  
11 information included a deposit account statement for Respondent Hawkins, which shows that between  
12 on October 8, 2014, there was a wire transfer into the account for \$25,000.<sup>156</sup> Investigator Gerdes  
13 testified that the wire transfer is consistent with the timing of Ms. Horn's investment in October  
14 2014.<sup>157</sup> Ms. Gerdes testified that the other investments Ms. Horn made do not show up on the bank  
15 statements because they were wired to a bank in Panama.<sup>158</sup> Investigator Gerdes testified that bank  
16 statements appear to show that from January 2014 to February 2015 Respondent Hawkins was  
17 physically located in Arizona because almost every debit or charge was from within Arizona.<sup>159</sup> Ms.  
18 Gerdes testified that the subpoenaed documents also included a new account audit checklist, a  
19 membership application, and a signature card that listed only Respondent Hawkins as the signer and  
20 applicant for the account.<sup>160</sup> Investigator Gerdes also testified that the subpoenaed documents also  
21 contained deposit account statements for Respondent Hawkins and show that from January 2014  
22 through March 2015, Respondent Hawkins was physically in Arizona because the deposits were from  
23

---

24 <sup>152</sup> Tr. at 98, Exh. S-34.

25 <sup>153</sup> Tr. at 99, Exh. S-35.

26 <sup>154</sup> Tr. at 99.

27 <sup>155</sup> Tr. at 100-102, Exh. S-36.

28 <sup>156</sup> Tr. at 101.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> Tr. at 102, Exh. S-36 at ACC000349-370.

<sup>160</sup> Tr. at 102-103, Exh. S-36 at ACC000371-373.

1 within Arizona.<sup>161</sup>

2 Investigator Gerdes testified that during an examination under oath for this proceeding,  
 3 Respondent Hawkins testified that he has resided in Arizona for the last ten years, specifically between  
 4 2013 and 2015.<sup>162</sup> Investigator Gerdes testified that during the same examination, Respondent Hawkins  
 5 pled the Fifth Amendment when asked about Biomed, Ms. Horn, whether he sold Biomed stock to Ms.  
 6 Horn, whether he made false and misleading representations to Ms. Horn regarding his history with  
 7 securities, and when asked why he has no Biomed documents.<sup>163</sup> Investigator Gerdes also testified that  
 8 Respondent Hawkins did not produce documents requested in the Division's subpoena related to  
 9 Biomed.<sup>164</sup>

10 On cross examination, Investigator Gerdes testified that she contacted Ms. Horn's attorney  
 11 rather than Ms. Horn because Ms. Horn was represented by an attorney and Ms. Horn's attorney was  
 12 the one who brought the claim to the Commission.<sup>165</sup> Ms. Gerdes also testified that her contact with  
 13 Ms. Horn's attorney was exclusively by telephone and that Ms. Horn was not always a part of the  
 14 conversations with her attorney.<sup>166</sup> Ms. Gerdes also testified that she did not recall having received any  
 15 information that did not personally come from Ms. Horn [through her attorney] or that Ms. Horn did  
 16 not personally tell her.<sup>167</sup> Ms. Gerdes testified that she spent approximately two to three hours in  
 17 conversation with Ms. Horn and/or her attorney.<sup>168</sup> Investigator Gerdes responded no when asked if  
 18 she was aware that Ms. Horn's attorney [Mr. Wiener] claims that he is not Ms. Horn's attorney.<sup>169</sup>

19 When questioned if she specifically asked Ms. Horn if Mr. Hawkins lied to you in the process  
 20 of getting you to invest and if Ms. Horn thought Mr. Hawkins cheated her, Investigator Gerdes testified,  
 21 "[n]o. I don't believe I did."<sup>170</sup>

22 Further, on cross examination, Investigator Gerdes testified that Ms. Horn did tell her that  
 23

24 <sup>161</sup> Tr. at 103, Exh. S-36 at ACC000554-602.

<sup>162</sup> Tr. at 104-105, Exh. S-3.

25 <sup>163</sup> Tr. at 105, Exh. S-3 at Tr. at 12-15.

<sup>164</sup> Tr. at 106, Exh. S-3 at Tr. at 14.

26 <sup>165</sup> Tr. at 109.

<sup>166</sup> *Id.*

27 <sup>167</sup> Tr. at 110.

<sup>168</sup> Tr. at 110 -111.

<sup>169</sup> Tr. at 111.

28 <sup>170</sup> Tr. at 112.

1 Respondent Hawkins failed to disclose the 2007 Consent Order, that he owed shareholders restitution,  
2 and that he had lost his ability to sell securities prior to her investment.<sup>171</sup>

3 On cross examination, Investigator Gerdes testified that she first spoke with Ms. Horn and her  
4 attorney in May or April of 2018.<sup>172</sup> Ms. Gerdes testified that during the times she spoke with Ms.  
5 Horn and her attorney that she didn't recall a time when Ms. Horn refused to answer questions or that  
6 her attorney directed her not to answer questions.<sup>173</sup>

7 On cross examination, Investigator Gerdes also testified that she specifically asked Ms. Horn if  
8 she was a sophisticated investor and that she said no, that her husband handled the finances and  
9 investing.<sup>174</sup>

10 In response to a question if she made any attempt to verify the amounts Respondent Hawkins  
11 had paid under the 2007 Consent Order, Ms. Gerdes testified that she contacted the Commission's  
12 accounting department to get the up-to-date payment amount.<sup>175</sup> Investigator Gerdes testified that she  
13 was unaware of and did not research what happened to Mathon, but that she read Respondent Hawkins'  
14 Answer which stated Mathon was bankrupt and turned over to a conservator.<sup>176</sup> Ms. Gerdes testified  
15 that she did not contact the conservator for Mathon in this matter.<sup>177</sup> Investigator Gerdes testified that  
16 she has no reason to doubt restitution in the amount of \$128,000 was paid as part of the 2007 Consent  
17 Order.<sup>178</sup>

18 In response to an inquiry whether Investigator Gerdes attempted to verify that Respondent  
19 Hawkins was the founder of Biomed, Investigator Gerdes testified that she did research on  
20 OpenCorporates, which showed Respondent Hawkins as the director of Biomed, but which does not  
21 necessarily make him the founder.<sup>179</sup> Investigator Gerdes testified that she did not know who Harold  
22 Burke is, but that she looked for him without success.<sup>180</sup> Investigator Gerdes testified that she could  
23

---

24 <sup>171</sup> Tr. at 112.

25 <sup>172</sup> Tr. at 113.

26 <sup>173</sup> Tr. at 113-114.

27 <sup>174</sup> Tr. at 116.

28 <sup>175</sup> Tr. at 117.

<sup>176</sup> *Id.*

<sup>177</sup> Tr. at 117-118.

<sup>178</sup> Tr. at 118.

<sup>179</sup> Tr. at 120.

<sup>180</sup> *Id.*

1 not recall whether she did or did not search for Harold Burke in Panama.<sup>181</sup>

2 On cross examination, Investigator Gerdes testified that she was aware that Ms. Horn purchased  
3 a home in Scottsdale in December 2014 and that she believed Ms. Horn sold the home in 2015.<sup>182</sup>

4 When asked about her thoughts when she read a letter to Ms. Horn and signed by Respondent  
5 Hawkins as “kiss you dear, Mel,” Ms. Gerdes testified that she thought it was “odd” that he did not  
6 sign it “love you.”<sup>183</sup> Investigator Gerdes testified that Ms. Horn explained to her that she was in an  
7 intimate relationship with Respondent Hawkins.<sup>184</sup> In response to Respondent Hawkins’ question, “did  
8 Mary [Ms. Horn] tell you we were unofficially engaged,” Investigator Gerdes testified “no she did  
9 not.”<sup>185</sup>

10 On cross examination, Investigator Gerdes testified that Ms. Horn was the only shareholder in  
11 Biomed that she could verify.<sup>186</sup> Ms. Gerdes testified that there were other names of shareholders,  
12 including Respondent Hawkins’ sister, but that Ms. Gerdes could not get a response from the other  
13 people.<sup>187</sup> Investigator Gerdes testified that she believed Respondent Hawkins’ sister was an investor  
14 because Ms. Horn said she was an investor and therefore Ms. Gerdes wanted to interview her.<sup>188</sup>

15 On cross examination, Investigator Gerdes testified that Ms. Horn stated she loaned money to  
16 Respondent Hawkins to purchase a vehicle.<sup>189</sup>

17 On cross examination, Ms. Gerdes testified that she’s never spoken to Ms. Horn’s son, by  
18 phone, letter or email, and that she does not know Ms. Horn’s son’s name.<sup>190</sup>

19 On cross examination, Investigator Gerdes testified that during her investigation she spoke with  
20 a man in Panama named Kumar Padilla. Ms. Gerdes testified that Mr. Padilla told her he was receiving  
21 shares in exchange for construction work he was doing.<sup>191</sup>

22 On cross examination, Investigator Gerdes testified that she did not inquire why Biomed

23 <sup>181</sup> Tr. at 120.

24 <sup>182</sup> Tr. at 121.

25 <sup>183</sup> Tr. at 121-122, Exh. S-9.

26 <sup>184</sup> Tr. at 122.

27 <sup>185</sup> *Id.*

28 <sup>186</sup> Tr. at 123.

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> Tr. at 124, Exh. S-21.

<sup>190</sup> Tr. at 124.

<sup>191</sup> Tr. at 125.



1 maintained separate general ledgers for Panama and Arizona.<sup>192</sup>

2 On cross examination, Ms. Gerdes testified that she double checked with the Commission's  
3 accountant concerning the amount of restitution Respondent Hawkins had paid with respect to the 2007  
4 Consent Order.<sup>193</sup>

5 On cross examination, Investigator Gerdes testified that Ms. Horn returned shares to  
6 Respondent Hawkins in exchange for \$40,000 because she wanted her money back.<sup>194</sup>

7 On cross examination, Ms. Gerdes testified that Ms. Horn received the correspondence from  
8 Harold Burke from Respondent Hawkins.<sup>195</sup>

9 On redirect, Investigator Gerdes testified that in a deposit statement from Credit Union West  
10 Bank in Respondent Hawkins' name, dated January 1, 2015 to January 31, 2015, it shows that a wire  
11 transfer for \$170,000 went into Respondent Hawkins' account on January 27, 2015.<sup>196</sup> Investigator  
12 Gerdes testified that Credit Union West Bank produced details for the January 27, 2015 wire transfer,  
13 which showed that the originator for the \$170,000 wire transfer was an entity Relay Relay, LLC,  
14 located in Greenwood, LA.<sup>197</sup> Ms. Gerdes testified that Relay Relay, LLC is a business Ms. Horn  
15 owned with her late husband and that Investigator Gerdes confirmed such with Ms. Horn.<sup>198</sup>  
16 Investigator Gerdes also testified that the document produced by the Credit Union West Bank shows  
17 that Respondent Hawkins was the beneficiary for the \$170,000 wire transfer and that in the "originator  
18 to beneficiary information" section it states "loan".<sup>199</sup> Ms. Gerdes testified that the document produced  
19 by Credit Union West Bank is the detail to the deposit statement for Respondent Hawkins' account  
20 dated January 1, 2015 to January 31, 2015.<sup>200</sup> Investigator Gerdes also testified that when she testified  
21 under cross examination that Ms. Horn had loaned Respondent Hawkins money she was referring to  
22 the \$170,000.<sup>201</sup> Ms. Gerdes testified that it was her understanding that the \$25,000 Ms. Horn sent to  
23

24 <sup>192</sup> Tr. at 126.

25 <sup>193</sup> Tr. at 126-127.

26 <sup>194</sup> Tr. at 128.

27 <sup>195</sup> Tr. at 130.

28 <sup>196</sup> Tr. at 131, Exh. S-36 at ACC000595.

<sup>197</sup> Tr. at 132-133, Exh. S-39.

<sup>198</sup> Tr. at 133.

<sup>199</sup> Tr. at 133, Exh. S-39.

<sup>200</sup> Tr. at 134.

<sup>201</sup> *Id.*

Respondent Hawkins in October 2014 was not a loan, but was part of her investment in Biomed.<sup>202</sup>

**William Melvin Hawkins (“Respondent Hawkins”)**<sup>203</sup>

Respondent Hawkins testified that he and Ms. Horn had a special relationship for more than 50 years.<sup>204</sup> He testified that they met in high school.<sup>205</sup>

Respondent Hawkins testified that that he moved to Oregon the summer before college and that he and Ms. Horn did not meet again until after his first semester in college.<sup>206</sup> Respondent Hawkins testified that over the next 10 to 15 years he and Ms. Horn probably saw each other every couple of years.<sup>207</sup>

Respondent Hawkins testified that he and Ms. Horn both lived in Houston for a brief period of time.<sup>208</sup> He testified that he and Ms. Horn met two times when she lived in Houston.<sup>209</sup>

Respondent Hawkins testified that when Ms. Horn left Houston she and her husband moved back to Las Vegas, NV.<sup>210</sup> He testified that he and Ms. Horn talked “off and on” up until the time Ms. Horn’s mother died.<sup>211</sup>

Respondent Hawkins testified that he attended Ms. Horn’s mother’s funeral and that he spoke with Ms. Horn for about 15 seconds.<sup>212</sup> He testified that sometime between a few days and a couple of weeks after the funeral, Ms. Horn contacted him by letter asking him if it was okay for her to call or write him.<sup>213</sup> Respondent Hawkins testified that he responded to Ms. Horn via email, and they begin talking by phone.<sup>214</sup>

Respondent Hawkins testified that Ms. Horn was her deceased husband’s caregiver for five years and that she stayed by his side until he died in March of 2014.<sup>215</sup>

---

<sup>202</sup> Tr. at 134.

<sup>203</sup> Respondent Hawkins provided direct testimony in a narrative format. Further, Respondent Hawkins also provided testimony not relevant to the allegations in the Notice and therefore the testimony is summarized herein.

<sup>204</sup> Tr. at 140, 148.

<sup>205</sup> Tr. at 140.

<sup>206</sup> Tr. at 142.

<sup>207</sup> Tr. at 143.

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> Tr. at 143-144.

<sup>212</sup> Tr. at 144.

<sup>213</sup> Tr. at 144-145.

<sup>214</sup> Tr. at 144.

<sup>215</sup> *Id.*

Respondent Hawkins testified that he met with Ms. Horn in Las Vegas in March 2014.<sup>216</sup> He testified that they were a committed couple after that time.<sup>217</sup>

Respondent Hawkins testified that in late 2014 Ms. Horn decided to purchase a home in Scottsdale, but that he “highly discouraged her” from doing so.<sup>218</sup> He testified that Ms. Horn insisted on buying a home and she did eventually purchase one and he moved in with her.<sup>219</sup> Respondent Hawkins testified that Ms. Horn told her family in Louisiana that they were living together.<sup>220</sup> He testified that Ms. Horn’s son “concocted a plan to lure her back to Louisiana.”<sup>221</sup> Respondent Hawkins testified that Ms. Horn’s son told her that her granddaughter missed her, and according to Respondent Hawkins Ms. Horn was distressed and she made plans to go back to Louisiana for the weekend.<sup>222</sup> He testified that after her weekend in Louisiana Ms. Horn never returned to her house in Scottsdale.<sup>223</sup> Respondent Hawkins testified that a few days later, he received a call from Ms. Horn’s attorney, Don Weiner, making “serious threats and accusations” that were inaccurate and that he was given three days to move out of Ms. Horn’s house.<sup>224</sup>

Respondent Hawkins testified that Ms. Horn loves her family and that she told Respondent Hawkins she could no longer see him.<sup>225</sup>

Respondent Hawkins testified that Ms. Horn had a “desire to help him” with Biomed.<sup>226</sup> Respondent Hawkins testified that because they wanted to have a life together it was important to him that Ms. Horn knew “everything he was dealing with financially.”<sup>227</sup> He testified that over an approximate 14-month period, he told Ms. Horn about “all the issues related to Biomed” and the 2007 Consent Order.<sup>228</sup> He further testified that they talked about “those things a dozen times.”<sup>229</sup>

---

<sup>216</sup> Tr. at 145.

<sup>217</sup> *Id.*

<sup>218</sup> Tr. at 145-146.

<sup>219</sup> Tr. at 146.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> Tr. at 146-147.

<sup>225</sup> Tr. at 147.

<sup>226</sup> Tr. at 148.

<sup>227</sup> Tr. at 149.

<sup>228</sup> Tr. at 149-150.

<sup>229</sup> *Id.*

1 Respondent Hawkins testified that he moved to Arizona in 2000, after he retired as president of  
 2 a stock brokerage firm.<sup>230</sup> He testified that he had a very successful career and had “millions of dollars”  
 3 when he came to Arizona.<sup>231</sup> He further testified that he invested “all that money in real estate in  
 4 Phoenix,” his money almost “doubled,” and that by the end of 2009, his net worth was  
 5 “a negative number.”<sup>232</sup> He testified that he declared bankruptcy and it was final in April 2010.<sup>233</sup>

6 Respondent Hawkins testified that Ms. Horn knew about Mathon, that he had invested people’s  
 7 money into Mathon, that he personally invested \$400,000 in Mathon, and that Mathon was a “Ponzi  
 8 scheme.”<sup>234</sup> He testified that although he agreed to the 2007 Consent Order on advice from his attorney,  
 9 he doesn’t believe he should have agreed, or that he did anything wrong.<sup>235</sup> Respondent Hawkins  
 10 testified that the Commission attorneys were “prosecuting him” because he had a Series 7 securities  
 11 license as well as 14 other securities licenses.<sup>236</sup> Respondent Hawkins testified that he obtained every  
 12 license you have to have from a beginning stock broker in the industry to running a major  
 13 corporation.<sup>237</sup> He testified that he had every license because that was his career path.<sup>238</sup>

14 Respondent Hawkins testified that [during the Mathon case] he gave the Commission attorneys  
 15 the names of other people who had done the same thing in relation to Mathon, but that they did not go  
 16 after others because they did not have a Series 7 license or money.<sup>239</sup> He testified that he was told this  
 17 information by his attorney.<sup>240</sup> Respondent Hawkins testified that he did not realize he was the target  
 18 of the Commission’s investigation into Mathon until after he had provided them with his financial  
 19 statement and was examined during a deposition.<sup>241</sup> Respondent Hawkins testified that around the same  
 20 time the market in Phoenix crashed and he lost everything and had to file for bankruptcy.<sup>242</sup>

21 Respondent Hawkins testified that Ms. Horn knew all about his financial situation as well as

---

22 <sup>230</sup> Tr. at 149.

23 <sup>231</sup> *Id.*

24 <sup>232</sup> Tr. at 149-150.

25 <sup>233</sup> Tr. at 150.

26 <sup>234</sup> *Id.*

27 <sup>235</sup> Tr. at 151.

28 <sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> Tr. at 151-152.

<sup>240</sup> Tr. at 152.

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

1 the 2007 Consent Order and his inability to pay the restitution [ordered in the 2007 Consent Order].<sup>243</sup>

2 According to Respondent Hawkins, restitution for the 2007 Consent Order started at \$2.2  
3 million and that he had invested \$400,000 and that by the time he signed the Consent Order 2007 he  
4 had paid it down from \$2.2 million to \$1,284,000, or just over \$500,000.<sup>244</sup>

5 Respondent Hawkins testified that he lost all his securities licenses, has been fired from three  
6 jobs as a result of the 2007 Consent Order, and that he can't even work for minimum wage.<sup>245</sup>

7 Respondent Hawkins testified that he got "involved with Biomed in 2008."<sup>246</sup> He testified that  
8 "he invested a significant sum of money to help with development of the company."<sup>247</sup> He also testified  
9 that James Maxfield ("Maxfield" or "Mr. Maxfield") was the founder of Biomed and that he asked  
10 Respondent Hawkins if would become a partner and that he agreed.<sup>248</sup> Respondent Hawkins testified  
11 that he gave money to Maxfield, that Maxfield was the "number one guy", that Maxfield was "the  
12 principal", and Respondent Hawkin's role was to assist Maxfield to build the company.<sup>249</sup> Respondent  
13 Hawkins also testified that "he was never the founder of Biomed, nor was he ever the principal in the  
14 company."<sup>250</sup>

15 Respondent Hawkins testified that he had been involved with Biomed for six years in 2013, and  
16 the company was at a point where they needed one last round of funding.<sup>251</sup> He testified that the partners  
17 had run out of money and that they needed \$325,000.<sup>252</sup> He also testified that Ms. Horn never  
18 performed any function in Biomed and that her involvement was limited to providing the funding  
19 Biomed needed to continue development.<sup>253</sup> Respondent Hawkins testified that Ms. Horn "offered to  
20 give him the money needed to get Biomed up and running."<sup>254</sup> He testified that he "refused her offer".  
21 ". . . "over several months."<sup>255</sup> He testified that Ms. Horn started to offer him the money, "not as just a

---

22 <sup>243</sup> Tr. at 153, 155.

23 <sup>244</sup> Tr. at 153-154.

24 <sup>245</sup> Tr. at 154-156, 166.

25 <sup>246</sup> Tr. at 156.

26 <sup>247</sup> *Id.*

27 <sup>248</sup> *Id.*

28 <sup>249</sup> Tr. at 156-157.

<sup>250</sup> Tr. at 157.

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

<sup>253</sup> Tr. at 158.

<sup>254</sup> *Id.*

<sup>255</sup> *Id.*

1 gift, but let me loan it to you.”<sup>256</sup> Respondent Hawkins testified that he finally agreed to allow Ms.  
2 Horn to loan him the money for Biomed.<sup>257</sup>

3 Respondent Hawkins testified that he did not solicit or approach Ms. Horn to buy Biomed  
4 stock.<sup>258</sup>

5 Respondent Hawkins testified that he told the partners of Biomed that Ms. Horn had offered to  
6 loan money to Biomed and that the partners agreed to accept the offer.<sup>259</sup> He testified he later asked the  
7 partners to agree to giving Ms. Horn shares of stock as collateral for the loan and they agreed.<sup>260</sup>

8 Respondent Hawkins testified that there was no sale of Biomed stock to Ms. Horn, her funding  
9 was a loan, and the stock in Biomed was added as collateralization to give her extra protection, and to  
10 justify her giving them a zero percent loan.<sup>261</sup>

11 Respondent Hawkins testified that he now realizes that the Investment Agreement, drafted by  
12 him,<sup>262</sup> fails to adequately depict Ms. Horn’s funding as a loan collateralized with stock and that he  
13 should have written it more accurately.<sup>263</sup> He testified that he did not amend the Investment Agreement  
14 because he did not consider it as the primary document guiding the transaction and that he believed the  
15 Addendum was adequate to reflect Ms. Horn’s loan.<sup>264</sup>

16 Respondent Hawkins testified that the Addendum confirms the fact that Ms. Horn’s funding  
17 was a loan, when it states “shareholders in Biomed have agreed by formal vote to forego any return  
18 of funds to them until Mary [Ms. Horn] is paid in full” and “Mary [Ms. Horn] acknowledges that Mel  
19 [Respondent Hawkins] is not in a financial position to be able to repay at this time but that he will make  
20 a best effort to do so, to pay whatever he can in the event that a liquidation takes place.”<sup>265</sup>

21 Respondent Hawkins testified that Ms. Horn agreed to loan us [Biomed] \$325,000 and that he  
22  
23

---

24 <sup>256</sup> Tr. at 158.

25 <sup>257</sup> *Id.*

26 <sup>258</sup> Tr. at 159, 166.

27 <sup>259</sup> Tr. at 160.

28 <sup>260</sup> Tr. at 161.

<sup>261</sup> *Id.*

<sup>262</sup> Tr. at 162.

<sup>263</sup> Tr. at 161-162, Exh. R-1.

<sup>264</sup> Tr. at 163-164.

<sup>265</sup> Tr. at 164-165.



1 gave her 40 percent of the Biomed's shares or 6,932 shares as collateral.<sup>266</sup> He testified that Ms. Horn  
 2 agreed to return a portion of the shares once he paid her a portion what was owed on the loan.<sup>267</sup>  
 3 Respondent Hawkins also testified that Ms. Horn agreed to reduce the amount owed on the loan from  
 4 \$283,000 to \$200,000, reducing the amount Respondent Hawkins owed on the loan to \$160,000, once  
 5 he paid her back the \$40,000.<sup>268</sup> Respondent Hawkins testified that, in exchange for the \$40,000, Ms.  
 6 Horn agreed to return 1,392 shares or 20 percent of her Biomed stock.<sup>269</sup>

7 Respondent Hawkins testified that Ms. Horn did send \$25,000 to his bank Credit Union West  
 8 to purchase equipment for Biomed.<sup>270</sup> Respondent Hawkins also testified that he took a loan from Ms.  
 9 Horn for \$170,000.<sup>271</sup> Respondent Hawkins testified that his sister and two friends had loaned him  
 10 \$150,000 to help him pay amounts owed under the 2007 Consent Order.<sup>272</sup> He testified that Ms. Horn  
 11 found out about the loan from one of his friends and that Ms. Horn offered to loan him \$170,000 to pay  
 12 the money back, and with the remainder of the money he bought a vehicle.<sup>273</sup> He testified that he paid  
 13 Ms. Horn the money she loaned him at a rate of \$200 per month for 40 months.<sup>274</sup>

14 On cross examination, Respondent Hawkins testified that he has been an Arizona resident since  
 15 at least 2000.<sup>275</sup> He testified that he had been registered with the Commission as a securities salesman,  
 16 had been in the security industry for more than 25 years, and that his registration with Commission was  
 17 revoked in 2007.<sup>276</sup>

18 On cross examination, Respondent Hawkins acknowledged that as part of the 2007 Consent  
 19 Order that revoked his registration with the Commission, he was ordered to pay restitution and  
 20 penalties, and the restitution and penalties were over a million dollars.<sup>277</sup> Respondent Hawkins testified

21 \_\_\_\_\_  
 22 <sup>266</sup> Tr. at 165. Although Respondent Hawkins testified that he gave Ms. Horn 40-percent or 6,932 shares of Biomed, the  
 evidence shows that the correct amount of shares given to Ms. Horn in exchange for her investment was 6,962. See, Exhibits  
 S-14 and S-20.

23 <sup>267</sup> Tr. at 165.

24 <sup>268</sup> *Id.*

25 <sup>269</sup> Tr. at 165. Respondent Hawkins testified that Ms. Horn agreed to give back 20 percent of her 6,932 shares; however,  
 the actual amount of shares she received was 6,962 and 1,392 is 20 percent of the total amount of her shares.

26 <sup>270</sup> Tr. at 167.

27 <sup>271</sup> *Id.*

28 <sup>272</sup> Tr. at 168.

<sup>273</sup> Tr. at 168-169.

<sup>274</sup> Tr. at 169.

<sup>275</sup> Tr. at 181.

<sup>276</sup> *Id.*

<sup>277</sup> Tr. at 182.

1 that he believed that his restitution payment of \$25,000 made on February 1, 2007, and his payment of  
 2 \$100,000 on February 12, 2008 were accurate.<sup>278</sup> Regarding the other restitution payments made  
 3 between 2013 to 2015, Respondent Hawkins testified he “assume[d] they’re probably accurate.”<sup>279</sup>

4 On cross examination, Respondent Hawkins testified that he paid more restitution than  
 5 \$128,768.82.<sup>280</sup> Respondent Hawkins testified that in addition to the \$128,768.82, his tax return refunds  
 6 were taken, that the conservator made payments to investors from money he recovered, and that  
 7 Respondent Hawkins had personally invested \$400,000 in Mathon and that the conservator used those  
 8 funds to make payments to investors.<sup>281</sup> When asked if he knew in what years his tax return refunds  
 9 were taken, Respondent Hawkins testified, “I don’t know.”<sup>282</sup> When asked if he knew the approximate  
 10 amounts of the tax return refunds, Respondent Hawkins, testified, “I don’t remember.”<sup>283</sup> When asked  
 11 if he brought evidence of the tax return refunds being taken, Respondent Hawkins testified, “[N]o.”<sup>284</sup>

12 On cross examination, Respondent Hawkins testified that he didn’t remember how many  
 13 restitution payments he made directly to investors, but that he “made more than a few.”<sup>285</sup> When asked  
 14 if he knew the dates the payments were made, Respondent Hawkins testified, “I don’t know.”<sup>286</sup> When  
 15 asked what the amounts of those payments were, Respondent Hawkins testified, “Don’t remember.”<sup>287</sup>  
 16 When asked if he brought any evidence of those payments, Respondent Hawkins testified, “No. . . .  
 17 [t]he evidence is with the ACC already.”<sup>288</sup> Regarding direct payments that the conservator made to  
 18 investors, when asked if that money came from him, Respondent Hawkins testified, “[N]o.”<sup>289</sup>  
 19 Respondent Hawkins also testified that he did not bring any records to support the payments made by  
 20 the conservator to the hearing.<sup>290</sup>

21 On cross examination, Respondent Hawkins acknowledged that Biomed documents do not state

---

22 <sup>278</sup> Tr. at 182, Exh. S-5.

23 <sup>279</sup> *Id.*

24 <sup>280</sup> Tr. at 183, Exh. S-5.

25 <sup>281</sup> Tr. at 183.

26 <sup>282</sup> Tr. at 184.

27 <sup>283</sup> *Id.*

28 <sup>284</sup> *Id.*

<sup>285</sup> Tr. at 184-185.

<sup>286</sup> Tr. at 185.

<sup>287</sup> *Id.*

<sup>288</sup> *Id.*

<sup>289</sup> Tr. at 186.

<sup>290</sup> *Id.*

1 that Biomed was offering the opportunity to obtain loans, but rather the offering documents provide an  
 2 ownership position in Biomed.<sup>291</sup> Respondent Hawkins also acknowledged that the offer does not state  
 3 it would be through a loan agreement, but states that the offer would be through purchasing common  
 4 shares.<sup>292</sup> Respondent Hawkins further acknowledged that the document states a “total investment”  
 5 rather than a total loan of \$325,000 is needed.<sup>293</sup> Respondent Hawkins acknowledged that the document  
 6 does not use the word “loan” at all and that it does not indicate that the shares would be collateral for  
 7 a loan.<sup>294</sup>

8 On cross examination, Respondent Hawkins acknowledged that the Investment Agreement with  
 9 Ms. Horn is titled “Investment Agreement” and not loan agreement.<sup>295</sup> Respondent Hawkins also  
 10 acknowledged that the Investment Agreement states Ms. Horn will “invest” \$325,000 rather than loan  
 11 Biomed money.<sup>296</sup> Respondent Hawkins further acknowledged that the Investment Agreement states  
 12 Ms. Horn has an ownership interest for her \$325,000 investment in the form of 6,957 shares and not in  
 13 exchange for a collateral on a loan.<sup>297</sup> Respondent Hawkins testified that Ms. Horn received voting  
 14 rights when she was offered shares for her collateral, and he acknowledged that the document does not  
 15 mention collateral and that he was “not sure” if the word “collateralization” exists or does not exist in  
 16 any document.<sup>298</sup>

17 On cross examination, Respondent Hawkins testified that the Investment Agreement that  
 18 described Ms. Horn as an investor was inaccurate.<sup>299</sup> In responding to the question, “all of the  
 19 documents that were provided to Ms. Horn that describe her as an investor that’s a false  
 20 representation?” Respondent Hawkins answered “[Y]es.”<sup>300</sup> In testifying about the Addendum to the  
 21 Investment Agreement given to Ms. Horn, Respondent Hawkins stated that the Addendum was  
 22 “technically incorrect,” when it stated that its purpose was to provide Ms. Horn with an additional  
 23

24 <sup>291</sup> Tr. at 187, Exh. S-7, ACC000190.

25 <sup>292</sup> Tr. at 187, Exh. S-7.

26 <sup>293</sup> *Id.*

27 <sup>294</sup> Tr. at 187-188, Exh. S-7.

28 <sup>295</sup> Tr. at 188, Exh. S-8.

<sup>296</sup> *Id.*

<sup>297</sup> Tr. at 188-189, Exh. S-8.

<sup>298</sup> Tr. at 189-190, Exh. S-8.

<sup>299</sup> Tr. at 190.

<sup>300</sup> *Id.*

1 degree of security, in regard to her purchase of stock in Biomed.<sup>301</sup>

2 On cross examination, Respondent Hawkins acknowledged that he had been in the securities  
3 industry for approximately three decades and that he was familiar with the difference between a loan  
4 and a purchase of stock.<sup>302</sup> Respondent Hawkins further acknowledged that the Addendum to the  
5 Investment Agreement states that he as, principal for Biomed, commits to repay Ms. Horn.<sup>303</sup>  
6 Respondent Hawkins also acknowledged that the Addendum does not use the terms “collateral” or  
7 “loan.”<sup>304</sup> Further, on cross examination, Respondent Hawkins acknowledged that although the  
8 Addendum to the Investment Agreement states he is the principal of Biomed in April 2014, he testified  
9 that he was “not officially” the principal of Biomed, but that the use of the term principal was a  
10 representation of his authority.<sup>305</sup> Respondent Hawkins testified that Maxfield was the president and  
11 principal of Biomed, that Respondent Hawkins was never formally named a principal, he was treated  
12 as a principal because he worked with Maxfield to make important decisions, but that Maxfield  
13 ultimately made the decisions.<sup>306</sup>

14 On cross examination, Respondent Hawkins testified that the interest rate on Ms. Horn’s loan  
15 to Biomed was zero percent.<sup>307</sup> In discussing how a zero percent interest rate loan was consistent with  
16 Respondent Hawkins’ email statements that he would “insure that [Ms. Horn’s] investment ends up  
17 being a great investment,” he responded that he and Ms. Horn had a private agreement that they would  
18 share in whatever profits Biomed made.<sup>308</sup> Respondent Hawkins testified that he did not mention the  
19 private agreement in his direct testimony because he wanted to keep it private and Ms. Horn did not  
20 want her son to know.<sup>309</sup>

21 On cross examination, Respondent Hawkins testified that Ms. Horn’s stock certificate was  
22 issued to her as collateral, but he acknowledged that the stock certificate states that the shares are fully  
23

24 <sup>301</sup> Tr. at 191, Exh. S-8 at ACC000198.

25 <sup>302</sup> Tr. at 191.

26 <sup>303</sup> Tr. at 192, Exh. S-8 at ACC000198.

27 <sup>304</sup> Tr. at 192.

28 <sup>305</sup> Tr. at 193, Exh. S-8.

<sup>306</sup> Tr. at 193-194.

<sup>307</sup> Tr. at 196.

<sup>308</sup> Tr. at 196-197, Exh. S-9 at ACC000300.

<sup>309</sup> Tr. at 197-198.

1 paid.<sup>310</sup>

2 On cross examination, Respondent Hawkins acknowledged that in email correspondence sent  
3 to Ms. Horn, he stated that Ms. Horn's "total investment in Biomed was \$283,630" as of March 2015  
4 and that the email does not refer to a loan.<sup>311</sup> Respondent Hawkins further acknowledged that in the  
5 email the words "loan" or "collateral" or "collateralization" do not appear at all.<sup>312</sup> When asked if he  
6 could identify any document admitted by the Division that refers to Ms. Horn's \$325,000 investment  
7 as a loan, Respondent Hawkins testified that the Addendum to the Investment Agreement infers that  
8 it's a loan, but does not state "loan" or "collateral" and uses the term "purchase" stock in Biomed.<sup>313</sup>

9 On cross examination, Respondent Hawkins acknowledged that it's true that he's had nine or  
10 ten months since he was served with the Notice to provide evidence that Ms. Horn's investment was a  
11 collateralized loan rather than a stock purchase.<sup>314</sup> Respondent Hawkins further testified that the only  
12 evidence he had to support his assertion that Ms. Horn's contribution was a loan was the Addendum to  
13 the Investment Agreement.<sup>315</sup>

14 On cross examination, Respondent Hawkins acknowledged that the offering document for  
15 Biomed states that Biomed was founded by James Maxfield and Mel Hawkins.<sup>316</sup> Respondent Hawkins  
16 testified that the statement that he was a founder of Biomed is false.<sup>317</sup> Respondent Hawkins testified  
17 that Maxfield sometimes "on a selective basis" gave Respondent Hawkins the authority to enter into  
18 agreements.<sup>318</sup> Respondent Hawkins testified that Maxfield did not consider him a founder of  
19 Biomed.<sup>319</sup> Respondent Hawkins testified that he did not know whether Maxfield was in the habit of  
20 drafting false information.<sup>320</sup>

21 . . .

22 . . .

---

23 <sup>310</sup> Tr. at 198, Exh. S-14.

24 <sup>311</sup> Tr. at 199, Exh. S-33 at ACC000181-182.

25 <sup>312</sup> Tr. at 200, Exh. S-33.

26 <sup>313</sup> Tr. at 201, Exh. S-8 at ACC000198.

27 <sup>314</sup> Tr. at 203.

28 <sup>315</sup> *Id.*

<sup>316</sup> Tr. at 204, Exh. S-7 at ACC000188.

<sup>317</sup> *Id.*

<sup>318</sup> Tr. at 204.

<sup>319</sup> Tr. at 205-206, Exh. S-7.

<sup>320</sup> Tr. at 206.

1 **IV. Legal Arguments/Resolution**

2 **A. Claims that Hearing was Unfair**

3 **1. Respondent's Position**

4 Respondent Hawkins claims that the hearing process was unfair because he was unable to  
 5 present the testimony of Mr. Maxfield or subpoena Ms. Horn.<sup>321</sup> Respondent Hawkins alleges that, if  
 6 Mr. Maxfield's testimony had been allowed, he would have testified to the loan transaction with Ms.  
 7 Horn.<sup>322</sup> Respondent Hawkins contends that he was not allowed to reschedule Mr. Maxfield's  
 8 testimony to October 30<sup>th</sup>.<sup>323</sup> Respondent Hawkins also contends that if Ms. Horn had been required  
 9 to testify and to be cross examined "it would have brought out this [that the transaction was a loan]  
 10 truth from her."<sup>324</sup> Respondent Hawkins contends that Ms. Horn was able to avoid his subpoenas and  
 11 did not appear to testify.<sup>325</sup>

12 **2. Division's Position**

13 The Division disputes Respondent Hawkins' claims that the hearing was unfair because he was  
 14 unable to present testimony from Ms. Horn and Mr. Maxfield.<sup>326</sup> The Division argues that any fault  
 15 with Respondent Hawkins being unable to present the testimony of Ms. Horn and Mr. Maxfield was  
 16 due to his own making.<sup>327</sup>

17 **3. Analysis/Resolution**

18 U.S. courts have stated that due process requires notice and an opportunity to be heard in  
 19 administrative proceedings."<sup>328</sup>

20 It is clear in Arizona that hearsay is admissible in administrative proceedings, and that it may,  
 21 in proper circumstances, be given probative weight."<sup>329</sup>

22 **a. Mr. Maxfield's Testimony**

23 Respondent Hawkins contends that Mr. Maxwell would have substantiated Respondent

24 <sup>321</sup> Respondent's Response Brief at 7-9.

25 <sup>322</sup> Respondent's Response Brief at 9-10.

26 <sup>323</sup> Respondent's Response Brief at 2, 9.

26 <sup>324</sup> Respondent's Response Brief at 9-10.

26 <sup>325</sup> *Id.*

27 <sup>326</sup> Division Post-Hearing Reply Brief at 1.

27 <sup>327</sup> Division Reply Brief at 1-2.

28 <sup>328</sup> *Matthews v. Eldridge*, 424 U.S. 319, 349 (1976).

28 <sup>329</sup> *Begay v. Arizona Dep't of Econ. Sec.*, 128 Ariz. 407, 409, 626 P.2d 137, 139 (App. 1981).



1 Hawkins' claim that the transaction with Ms. Horn was a loan and that Mr. Maxwell spoke with Ms.  
 2 Horn regarding the loan transaction. Respondent Hawkins asserts that Mr. Maxwell's testimony was  
 3 not allowed.<sup>330</sup>

4 Here, the record shows that Respondent Hawkins was served with the Notice.<sup>331</sup> The evidence  
 5 shows that the Notice provided information on the procedures in administrative proceedings (i.e., that  
 6 Respondents may call witnesses).<sup>332</sup>

7 In addition to the information in the Notice, the record shows that during a pre-hearing  
 8 conference held on March 4, 2020, a discussion was held regarding the process and procedures for the  
 9 hearing.<sup>333</sup> Respondent Hawkins was made aware that he would be allowed to call witnesses for the  
 10 hearing and that any witnesses called would be subject to cross-examination.<sup>334</sup> Respondent Hawkins  
 11 was also told that if he intended to request that witnesses appear telephonically, he was to file a  
 12 request.<sup>335</sup> Respondent Hawkins was also directed to information on the Division's website, related to  
 13 the procedure to subpoena witnesses.<sup>336</sup> At the request of the ALJ, the Division's attorney shared the  
 14 website information with Respondent Hawkins.<sup>337</sup> Further, Respondent Hawkins was given notice that  
 15 although Commission rules allow for him to appear on his own behalf for the hearing, he was expected  
 16 to understand the hearing process.<sup>338</sup>

17 During the October hearing, Respondent Hawkins stated that he mistakenly told Mr. Maxwell  
 18 to appear for testimony on October 29th, a date for which no hearing was scheduled.<sup>339</sup> On October  
 19 27<sup>th</sup>, Respondent Hawkins stated he would have Mr. Maxwell appear on October 28th, but on that date  
 20 Mr. Maxwell did not appear; this time Respondent Hawkins stated that Mr. Maxfield was undergoing  
 21 chemotherapy and was unable to speak for 24 hours and that he was only available to testify on October  
 22 29<sup>th</sup>.<sup>340</sup> When asked if Mr. Maxfield could appear on October 30th, due to having had chemotherapy

23 <sup>330</sup> Respondent's Response Brief at 9-10.

24 <sup>331</sup> See, Procedural History *supra*.

25 <sup>332</sup> Exh. S-37

26 <sup>333</sup> March 4, 2020, Pre-Hearing Transcript at 7-8.

27 <sup>334</sup> March 4, 2020, Pre-Hearing Transcript at 8.

28 <sup>335</sup> March 4, 2020, Pre-Hearing Transcript at 9.

<sup>336</sup> March 4, 2020, Pre-Hearing Transcript at 10.

<sup>337</sup> March 4, 2020, Pre-Hearing Transcript at 10-11.

<sup>338</sup> March 4, 2020, Pre-Hearing Transcript at 7.

<sup>339</sup> Tr. at 136-137.

<sup>340</sup> Tr. at 178.

1 treatment on October 28<sup>th</sup>, Respondent Hawkins stated Mr. Maxfield could not appear on October 30th  
2 to give testimony.<sup>341</sup>

3 Also at the October hearing, Respondent Hawkins attempted to admit into evidence purported  
4 questions that he claimed he emailed to Mr. Maxfield and that Mr. Maxfield answered and signed, in  
5 lieu of Mr. Maxfield giving testimony or being subject to cross-examination.<sup>342</sup> The document was not  
6 allowed to be admitted into evidence, given that Respondent Hawkins had notice of the hearing dates  
7 and could have had his witness appear for one of the hearing dates.<sup>343</sup>

8 Further, the record establishes that Respondent Hawkins was given notice of and agreed to the  
9 October hearing dates and the hearing dates were memorialized by Procedural Order issued September  
10 16, 2020. Also, Respondent Hawkins was given information regarding how to have witnesses appear  
11 for the hearing. Contrary to Respondent Hawkins' claim that Mr. Maxfield was not allowed to provide  
12 testimony on October 30th,<sup>344</sup> the record shows that the ALJ asked Respondent Hawkins twice<sup>345</sup>  
13 during the hearing whether Mr. Maxfield could appear for testimony on October 30<sup>th</sup>. In both instances,  
14 Respondent Hawkins stated either he was unsure or that Mr. Maxfield could not testify on October  
15 30<sup>th</sup>.<sup>346</sup> Further, Respondent Hawkins' statements that Mr. Maxfield needed 24 hours after his chemo  
16 treatment before he could speak were inconsistent with Respondent Hawkins statement that he was  
17 only available on October 29<sup>th</sup> after having received treatment on October 28<sup>th</sup>. Based on the above  
18 facts, we find that Respondent Hawkins' statements regarding Mr. Maxfield's ability to testify (only  
19 on October 29), a date for which no hearing was scheduled, are not credible. We also find that  
20 Respondent Hawkins' claim that he was not allowed to reschedule Mr. Maxfield's testimony for  
21 October 30th is also not credible.

22 Respondent Hawkins' claim that the hearing was unfair because he was not allowed to admit  
23 testimony purportedly from Mr. Maxfield, is not persuasive. In addition to the facts *supra*, Respondent  
24 Hawkins was given notice of the new hearing dates at the September 15<sup>th</sup> hearing (when he was granted  
25

---

26 <sup>341</sup> Tr. at 215.

27 <sup>342</sup> Tr. at 178.

28 <sup>343</sup> Tr. at 218.

<sup>344</sup> Respondent's Response Brief at 2.

<sup>345</sup> Tr. at 179, 215.

<sup>346</sup> Tr. at 180, 215-216.

1 a continuance), he agreed to the new hearing dates,<sup>347</sup> and the new hearing dates were memorialized in  
2 a Procedural Order issued on September 16, 2020. Respondent Hawkins was aware of the procedures  
3 for having a witness appear for hearing, he was also aware of the hearing dates and agreed to those  
4 dates; therefore, we find that Respondent Hawkins was given notice and a fair opportunity to have Mr.  
5 Maxfield appear to give testimony at the hearing and to be subject to cross-examination.

6 Respondent Hawkins also claims it was a “double standard” to allow Investigator Gerdes to  
7 testify regarding her interviews with Ms. Horn, but he was not allowed to admit the purported answers  
8 given by Mr. Maxfield to Respondent Hawkins as testimony.<sup>348</sup> In contrast to the document Respondent  
9 Hawkins attempted to admit into evidence, Investigator Gerdes was available for cross examination  
10 and Respondent Hawkins was given an opportunity to and did cross-examine Investigator Gerdes  
11 regarding her interviews with Ms. Horn.<sup>349</sup> Further, as with the testimony given by Ms. Gerdes  
12 regarding her interviews with Ms. Horn, Respondent Hawkins was allowed to testify about statements  
13 made by Mr. Maxfield.<sup>350</sup> Also, Ms. Gerdes testimony was credible as it was supported by reliable  
14 documentary evidence, provided by Ms. Horn through her attorney. Finally, the record is void of any  
15 evidence that Respondent Hawkins objected to Investigator Gerdes’ testimony. Therefore, we find that  
16 there was no “double standard” and that Respondent Hawkins was given a fair opportunity to present  
17 witness testimony and to cross-examination witnesses.

18 **b. Ms. Horn’s testimony**

19 Respondent Hawkins claims that he was unable to get Ms. Horn to testify. The record shows  
20 that the hearing was originally scheduled to begin on September 15, 2020.<sup>351</sup> On September 15<sup>th</sup>,  
21 Respondent Hawkins appeared for the hearing and stated he had been unable to properly subpoena Ms.  
22 Horn and he requested and was granted a continuance of the hearing to allow him additional time to  
23 subpoena Ms. Horn.<sup>352</sup> Respondent Hawkins stated that upon motion by Ms. Horn’s attorney, a  
24

25 <sup>347</sup> September 15, 2020, Hearing Tr. at 17.

26 <sup>348</sup> Respondent’s Response Brief at 7.

27 <sup>349</sup> Tr. at 112-114, 116, 121-124.

28 <sup>350</sup> Tr. at 160, 204, 205-206.

<sup>351</sup> See, Procedural Order issued March 9, 2020. The hearing dates were reconfirmed by Procedural Order issued on August 25, 2020.

<sup>352</sup> September 15, 2020, Hearing Tr. at 7, 17.

Louisiana court had quashed the subpoena for Ms. Horn because the subpoena was deficient.<sup>353</sup> Over the objection by the Division, Respondent Hawkins was granted a continuance of the hearing date to allow him additional time to subpoena Ms. Horn.<sup>354</sup> At that time, Respondent Hawkins was informed that the hearing would be held on the new hearing date even if Respondent Hawkins failed to properly subpoena Ms. Horn.<sup>355</sup> Respondent Hawkins was also **again** advised that although he was representing himself in this proceeding he was expected to understand and to execute the procedures correctly.<sup>356</sup> Therefore, we find that Respondent Hawkins was given notice and a fair opportunity to subpoena Ms. Horn and that his failure to do so did not violate due process.

## **B. Classification of Investment**

### **1. Division's Position**

The Division alleges that Respondents offered and sold securities in the form of shares of Biomed stocks.<sup>357</sup> The Division asserts Biomed, as a corporation,<sup>358</sup> issued shares of its common stock "as a vehicle for allocating and selling an ownership interest in the company."<sup>359</sup> The Division also contends that Ms. Horn after purchasing Biomed stock, received securities in the form of shares, in exchange for her investment.<sup>360</sup>

The Division disputes Respondent Hawkins' claim that the transaction between he and Ms. Horn was a loan rather than an investment; and therefore, not a security.<sup>361</sup> The Division argues that the evidence demonstrates that Ms. Horn purchased Biomed stock,<sup>362</sup> Ms. Horn acquired shares of Biomed, and was a shareholder.<sup>363</sup> Further, the Division contends that Respondent Hawkins' explanation of why the transaction was a loan rather than an investment is not credible.<sup>364</sup>

Finally, the Division argues that Respondent Hawkins' claim that Ms. Horn's investment was

<sup>353</sup> September 15, 2020, Hearing Tr. at 4-6, 9-10, 16.

<sup>354</sup> September 15, 2020, Hearing Tr. at 12.

<sup>355</sup> See, Procedural Order issued September 16, 2020.

<sup>356</sup> September 15, 2020, Hearing Tr. at 9 and March 4, 2020, Pre-Hearing Transcript at 7.

<sup>357</sup> Notice ¶13, Division's Post-Hearing Brief at 8.

<sup>358</sup> Tr. at 33-34, 44, Exh. S-6 at ACC000229, S-37 ¶ 9, S-38.

<sup>359</sup> Division's Post-Hearing Brief at 8, Exh. S-7 at ACC000194-195, S-8, S-33.

<sup>360</sup> Division's Post-Hearing Brief at 8-9, Tr. at 37, 39, 144, 157-158, Exh. S-37 at ¶¶14-15, S-38, at ¶ III-14-18.

<sup>361</sup> Division's Reply Brief at 6.

<sup>362</sup> Division's Post-Hearing Brief at Section IV. A.2.

<sup>363</sup> Division's Reply Brief at 7, Exh. S-8 at ACC000196, ACC000198, Exh. S-33.

<sup>364</sup> Division's Reply Brief at 7, Tr. at 186, 193, 196, 202.

1 like a bond purchase is flawed because under the law, a bond is a security and therefore Respondent  
2 Hawkins is admitting the transaction was a sale of a securities.<sup>365</sup>

### 3 **2. Respondent Hawkins' Position**

4 Respondent Hawkins contends that the transaction with Ms. Horn was a loan, she was given a  
5 personal guarantee by him to repay the loan, and that she was given shares of Biomed as additional  
6 collateral for her loan.<sup>366</sup> Respondent Hawkins asserts that Ms. Horn never purchased shares of Biomed  
7 as an investment.<sup>367</sup> Respondent Hawkins acknowledges that his emails and other documents sent to  
8 Ms. Horn contain the term "investment" but that he used the term as "a general description" of Ms.  
9 Horn's transaction."<sup>368</sup> Respondent Hawkins contends that a bond purchase is "generally described as  
10 an investment," but that a bond is a loan transaction and not a security.<sup>369</sup>

### 11 **3. Resolution**

12 A.R.S. § 44-1801(27)(a), states in part, that a security means "any note, stock, treasury stock,  
13 bond. . ."

14 At the time Respondent Hawkins entered the transaction with Ms. Horn, he had more than 25  
15 years' experience in the security industry.<sup>370</sup> Respondent Hawkins testified that he is a retired president  
16 of a stock brokerage firm,<sup>371</sup> and according to him he had a "very successful career".<sup>372</sup> Respondent  
17 Hawkins testified that throughout his career he obtained, a Series 7 securities license as well as 14 other  
18 securities licenses that he stated are required to move from a beginning stock broker to running a major  
19 corporation.<sup>373</sup> Respondent Hawkins claims that he obtained the licenses because the security industry  
20 was his career path.<sup>374</sup> Respondent Hawkins also testified that he is familiar with the difference between  
21 a loan and a purchase of stock.<sup>375</sup>

22 Here, the evidence shows that Ms. Horn executed an Investment Agreement which stated Ms.

23 <sup>365</sup> Division's Reply Brief at 7,

24 <sup>366</sup> Respondent's Response Brief at 8.

25 <sup>367</sup> *Id.*

26 <sup>368</sup> Respondent's Response Brief at 9.

27 <sup>369</sup> *Id.*

28 <sup>370</sup> Tr. at 181.

<sup>371</sup> Tr. at 149.

<sup>372</sup> *Id.*

<sup>373</sup> Tr. at 151.

<sup>374</sup> *Id.*

<sup>375</sup> Tr. at 191.

1 Horn would *invest* (emphasis added) \$325,000 in Biomed, that she would receive 6,957 common shares  
 2 of Biomed, which represented a 40 percent ownership position in the company.<sup>376</sup> The evidence also  
 3 shows, Respondent Hawkins drafted<sup>377</sup> and executed the Investment Agreement on behalf of Biomed  
 4 and Ms. Horn signed it as an “investor.”<sup>378</sup> The Investment Agreement also states Ms. Horn’s  
 5 “acquisition of 6,957 shares of Biomed entitles her to voting rights.”<sup>379</sup> The Investment Agreement  
 6 included an Addendum that states that its purpose “was an attempt to provide Mary [Ms. Horn] an  
 7 additional degree of security in regards to the funds she is expending to *purchase* Biomed *stock*  
 8 (emphasis added).”<sup>380</sup> Further, the Addendum states that “Mel Hawkins, principal of Biomed, also  
 9 commits to make best efforts to repay Mary [Ms. Horn] personally if liquidation of Biomed assets do  
 10 not provide a full restitution to her of the dollars she has “*invested*” (emphasis added).<sup>381</sup> In addition,  
 11 Respondent Hawkins acknowledged that in his emails and in other documents sent to Ms. Horn that he  
 12 refers to her contributions as an investment.<sup>382</sup>

13 For the first time during direct testimony, Respondent Hawkins alleged that Ms. Horn received  
 14 shares of Biomed stock as collateral for a loan rather than in exchange for her investment.<sup>383</sup>  
 15 Respondent Hawkins acknowledged on cross examination, that the offering documents do not refer to  
 16 a loan, but provide Ms. Horn an ownership position in exchange for her investment in Biomed,<sup>384</sup> that  
 17 the documents state that the offer would be made through purchasing common shares of Biomed and  
 18 not a loan, and that the documents do not include the terms “loan” or “collateral” nor do they indicate  
 19 that Ms. Horn’s shares in Biomed would be collateral for a loan.<sup>385</sup>

20 Given Respondent Hawkins’ more than 25-years’ experience in the securities industry and the  
 21 absence of reliable evidence to support Respondent Hawkins’ testimony that the transaction with Ms.  
 22 Horn was a loan, we find Respondent Hawkins’ testimony that the transaction with Ms. Horn was a

---

24 <sup>376</sup> Tr. at 48, Exh. S-8.

25 <sup>377</sup> Tr. at 162.

26 <sup>378</sup> Exh. S-8.

27 <sup>379</sup> *Id.*

28 <sup>380</sup> Tr. at 50, Exh. S-8 at ACC000198.

<sup>381</sup> Exh. S-8 at ACC000198.

<sup>382</sup> Respondent’s Response Brief at 9.

<sup>383</sup> Tr. at 158, 161.

<sup>384</sup> Tr. at 187, Exh. S-7 at ACC000190.

<sup>385</sup> Tr. at 187-188, 189-190, 192, Exh. S-7, Exh. S-8.



loan rather than an investment, is not persuasive. The consistent use of the term “investment” and the absence of the terms “loan” or “collateral” in the documents used to execute the transaction demonstrates that Respondent Hawkins assertion that the transaction with Ms. Horn was a loan is not supported by the evidence. Based on the above facts, we find that the transaction between Ms. Horn and Respondent Hawkins involved the sale of stock and is therefore a security as defined by A.R.S. § 44-1801(27)(a). Further, to the extent that Respondent Hawkins claims that the transaction between himself and Ms. Horn was a bond purchase, we find that the transaction nonetheless would constitute a security, as a bond is defined as a security pursuant to A.R.S. § 44-1801(27)(a).

### **C. Participation in the Sale of Biomed Stock**

#### **1. Division’s Position**

The Division asserts that Respondent Hawkins and Biomed participated in the sale of securities and are therefore subject to this enforcement action pursuant to A.R.S. §§ 44-2032 and 44-2003(A).<sup>386</sup>

The Division asserts that Respondent Hawkins and Biomed participated in the sale of Biomed stock.<sup>387</sup> The Division also argues that the evidence demonstrates that Respondent Hawkins and Biomed offered and sold Biomed stock and that Respondent Hawkins acted to finalize transactions with Ms. Horn on behalf of Biomed.<sup>388</sup> In support of its position, the Division asserts that:

- Respondent Hawkins was Ms. Horn’s sole contact for the transactions with Biomed;<sup>389</sup>
- Ms. Horn only became aware of Biomed through Respondent Hawkins;<sup>390</sup>
- Respondent Hawkins drafted<sup>391</sup> and provided the Biomed Offering Documents to Ms.

<sup>386</sup> Division’s Post-Hearing Brief at 9.

**A.R.S. § 44-2032** states in part that, the Commission may issue cease and desist orders; civil penalties; injunctions; civil restitution; and prosecute violations when:

If it appears to the commission, either on complaint or otherwise, that any person has engaged in, is engaging in or about to engage in any act, practice or transaction that constitutes a violation this chapter, or any rule or order of the commission under this chapter. . .”

**A.R.S. § 44-2003(A)** states, in pertinent part that:

. . . [A]n action brought under section 44-2001, 44-2002 or 44-2032 may be brought against any person, including any dealer, salesman or agent, who made, participated in or induced the unlawful sale or purchase, and such persons shall be jointly and severally liable to the person who is entitled to maintain such action.

<sup>387</sup> Division’s Post-Hearing Brief at 9.

<sup>388</sup> *Id.*

<sup>389</sup> Tr. at 40.

<sup>390</sup> Tr. at 37, 39, 144, 157-158, Exh. S-37 ¶¶ 14-15, S-38 at ¶ III- 14-18.

<sup>391</sup> Tr. at 162.

Horn;<sup>392</sup>

- Respondent Hawkins stated that he offered shares to Ms. Horn, agreed to the high number shares she was given, offered Ms. Horn “exceptional pricing,” and agreed to fully fund the shares to Ms. Horn even though she was investing over time;<sup>393</sup>
- Respondent Hawkins, drafted and executed on behalf of Biomed the Investment Agreement, wherein Ms. Horn agreed to purchase Biomed stock;<sup>394</sup>
- Respondent Hawkins, on behalf of Biomed, sent an email to all shareholders requesting that they approve the terms of Ms. Horn’s Investment Agreement;<sup>395</sup>
- Respondent Hawkins provided Ms. Horn with the wire instructions to fund her first \$35,000 investment, including Biomed’s bank information at Creditcorp Bank in Panama;<sup>396</sup> and
- Respondent Hawkins continued to request funding by requesting Ms. Horn send \$25,000 directly to him, which she did.<sup>397</sup>

## **2. Respondent Hawkins’ Position**

Respondent Hawkins asserts that he did not “solicit or sell” securities to Ms. Horn. Horn.<sup>398</sup>

Respondent Hawkins disputes the Division’s claims that he was the sole person involved in Ms. Horn’s transaction with Biomed.<sup>399</sup> Respondent Hawkins asserts that Mr. Maxfield was involved in the transaction and that Ms. Horn spoke with Maxfield about the loan transaction.<sup>400</sup>

## **3. Analysis/Resolution**

Here, the evidence demonstrates that Ms. Horn became aware of Biomed through conversations with Respondent Hawkins.<sup>401</sup> The evidence also shows Respondent Hawkins drafted<sup>402</sup> and provided Ms. Horn with offering documents before she invested.<sup>403</sup> The record shows that Respondent Hawkins

<sup>392</sup> Tr. at 39, 41, 45, 47-48, Exh. S-6, S-7 at ACC000194-195, S-8.

<sup>393</sup> Tr. at 96-97, Exh. S-33.

<sup>394</sup> Tr. at 49, Exh. S-8, S-37 at ¶ 24, S-38.

<sup>395</sup> Tr. at 56-58, Exh. S-18 at ACC000302.

<sup>396</sup> Tr. at 51-52, 53-54, Exh. S-9, Exh. S-10.

<sup>397</sup> Tr. at 66-67, 69-70, 101, 167, Exh. S-19, S-21, S-36 at ACC000586.

<sup>398</sup> Respondent’s Response Brief at 11.

<sup>399</sup> Respondent’s Response Brief at 8.

<sup>400</sup> Respondent’s Response Brief at 8-10.

<sup>401</sup> Tr. at 37-39.

<sup>402</sup> Tr. at 162.

<sup>403</sup> Tr. at 39-41, 46, Exhs. S-6 and S-7.

executed the Investment Agreement and Addendum to Ms. Horn on behalf of Biomed.<sup>404</sup> The evidence further shows that Respondent Hawkins was in regular contact with Ms. Horn regarding her investment and the status of Biomed.<sup>405</sup> The evidence also shows that Respondent Hawkins was the only person that Ms. Horn communicated with about Biomed.<sup>406</sup> Contrary to Respondent Hawkins' claim that other members of Biomed participated in the transaction with Ms. Horn, the record is void of evidence showing that other members participated in the transaction with Ms. Horn and even if they had the evidence demonstrates that Respondent Hawkins acted to close the transaction. Therefore, we find that Respondent Hawkins acted to finalize transactions on behalf of Biomed and that Respondent Hawkins and Biomed participated in the sale of securities to Ms. Horn.<sup>407</sup> Further, based on our finding that Respondent Hawkins and Biomed participated in the sale of securities they are subject to this enforcement action pursuant to A.R.S. §§ 44-2032 and 44-2003(A).

#### **D. Offer and Sale of Securities Within or From Arizona**

##### **1. Division's Position**

The Division asserts that Respondents offered and sold shares of Biomed stock within or from Arizona in violation of A.R.S. § 44-1841.<sup>408</sup> The Division also alleges that Biomed stock was not registered and in violation of A.R.S. § 44-1841(A).<sup>409</sup> Further, the Division argues that Respondents have not met their burden of proof or claimed that the sale of Biomed stock was exempt pursuant to A.R.S. § 44-2033.<sup>410</sup> The Division also alleges that Respondents violated A.R.S. § 44-1842 because they were not registered by the Commission to offer or sell securities.<sup>411</sup>

##### **2. Respondent Hawkins' Position**

Respondent Hawkins disputes the Division's assertion that Ms. Horn bought shares of Biomed stock as an investment despite the use of the word "investment" in the correspondence and documents

<sup>404</sup> Tr. at 162, 39, 41, 45, 47-48, Exhs. S-6, S-7 at ACC000194-195, S-8.

<sup>405</sup> Tr. at 52-53, 56, 60-61, 66-67, 71-72, 77 78-79, 80, 81-82, 85-86, Exhs. S-9, S-10, S-13, S-17, S-19, S-22, S-24, S-25, S-26, S-27, S-29.

<sup>406</sup> Tr. at 40.

<sup>407</sup> Tr. at 37, 39, 40, 41, 45, 47-48, 49, 51-52, 53-54, 56-58, 66-67, 69-70, 96-97, 101, 144, 157-158, 162, 167 Exhs. S-37 ¶¶ 14-15, S-38 at ¶ III- 14-18, S-6, S-7 at ACC000194-195, S-8, S-33, S-8, S-37 at ¶ 24, S-38, S-18 at ACC000302, S-9, S-10, S-19, S-21, and S-36 at ACC000586.

<sup>408</sup> Division's Post-Hearing Brief at 8.

<sup>409</sup> Division's Post-Hearing Brief at 11.

<sup>410</sup> Division's Post-Hearing Brief at 12.

<sup>411</sup> *Id.*

Respondent Hawkins gave to Ms. Horn.<sup>412</sup> Respondent Hawkins contends that the transaction with Ms. Horn was a loan to Biomed, he personally guaranteed the loan, and that Ms. Horn was given shares as collateral for the loan.<sup>413</sup> Respondent Hawkins asserts that he did not “solicit or sell” securities to Ms. Horn and that there was no need to register the securities because no securities were sold.<sup>414</sup> Respondent Hawkins also contends that no exemption was needed because no securities were sold.<sup>415</sup>

### 3. Analysis/Resolution

In Arizona, “it is unlawful to sell or offer to sale within or from this state any securities unless the securities have been registered pursuant to Article 6 or 7 of [Chapter 12 of the Securities Act] or are federally covered securities if the securities comply with section 44-1843.02 or chapter 13, article 12 of this title,” pursuant to A.R.S. § 44-1841(A).

Further, A.R.S. § 44-1842(A) states that “[i]t is unlawful for any dealer to sell or purchase or offer to sell or buy any securities, or for any salesman to sell or offer for sale any securities within or from the state unless the dealer or salesman is registered . . . .”<sup>416</sup>

Pursuant to A.R.S. § 44-2033, the burden of proving the existence of any exemption is on the party raising the defense.

#### a. From or Within Arizona

Here, Respondent Hawkins testified that he moved to Arizona in 2000.<sup>417</sup> Respondent Hawkins also specifically testified that he resided in Arizona between 2013 and 2015.<sup>418</sup> The evidence shows Respondent Hawkins maintained a bank account with Credit Union West Bank in Arizona, showing that he made debits, charges and deposits, from January 2014 to March 2015, and further indicating

<sup>412</sup> Respondent’s Response Brief at 8.

<sup>413</sup> *Id.*

<sup>414</sup> Respondent’s Response Brief at 11.

<sup>415</sup> *Id.*

<sup>416</sup> Under A.R.S. § 1801(10)(b) a dealer is defined as “. . . an issuer, other than an investment company, who directly or through an officer, director, or employee or agent who is not registered as a dealer under this chapter, engages in selling securities issued by such issuer.”

A.R.S. § 1801(23) defines a salesman as “an individual, other than a dealer, employed, appointed or authorized by a dealer to sell securities in this state . . . [t]he partners or executive officers of a registered dealer shall not be deemed a salesman within the meaning of this definition.”

A.R.S. § 1801(16) defines an “offer for sale” to include “an attempt or offer to dispose of, or solicitation of an order or offer to buy, a security or interest in a security for value. . . .”

<sup>417</sup> Tr. at 149.

<sup>418</sup> Tr. at 104-105, Exh. S-3.

1 that he was physically in Arizona during those time periods.<sup>419</sup> The evidence also shows that Ms. Horn  
 2 made her first investment in Biomed in 2014 after Respondent Hawkins told her about the company.<sup>420</sup>  
 3 Further, the evidence shows it was Ms. Horn's understanding that Respondent Hawkins was in Arizona  
 4 during their email and telephone conversations.<sup>421</sup> Based on documents Respondent Hawkins provided  
 5 to Ms. Horn the evidence shows that Biomed conducted part of its business in Arizona<sup>422</sup> by, among  
 6 other things, transferring Biomed funds from Panama to Arizona bank accounts,<sup>423</sup> and wiring funds  
 7 from Biomed's Panama bank account to Respondent Hawkins in Arizona.<sup>424</sup> The evidence also shows  
 8 that Biomed attempted to register its corporation with the Commission.<sup>425</sup> Finally, the evidence shows  
 9 that an offering document dated March 8, 2014, provided to Ms. Horn stated that Respondent Hawkins  
 10 was a resident of Arizona.<sup>426</sup>

11 Therefore, we find that Respondent Hawkins was physically residing in Arizona and  
 12 Respondent Hawkins and Biomed conducted a portion of Biomed's operations within or from Arizona  
 13 during the timeframe of Ms. Horn's investments.

14 **b. Offer or Sale**

15 The evidence shows that before Ms. Horn invested, Respondent Hawkins sent her an  
 16 Investment Agreement between Harold Burke and Biomed dated December 31, 2013.<sup>427</sup> The evidence  
 17 also shows that in another offering document for Biomed dated March 8, 2014, the document states  
 18 that the company is seeking additional funding and offers an ownership position through purchasing  
 19 common shares representing 30 percent of the company for a total of \$325,000.<sup>428</sup> Both offering  
 20 documents listed James Maxfield and Respondent Hawkins as the founders of Biomed and showed that  
 21 Respondent Hawkins was the person expected to execute the Investment Agreement on behalf of  
 22 Biomed.<sup>429</sup>

23 <sup>419</sup> Tr. at 101-103, Exh. S-36 at ACC000349-370, ACC000371-373, ACC000554-602.

24 <sup>420</sup> Tr. at 37-38.

24 <sup>421</sup> Tr. at 38.

25 <sup>422</sup> Exhs. S-25 at ACC000203 ACC000204, S-27, S-28, and S-29.

25 <sup>423</sup> Exhs. S-25.

26 <sup>424</sup> Exhs. S-25 at ACC000202, ACC000204.

26 <sup>425</sup> Tr. at 32-33.

27 <sup>426</sup> Exh. S-7 at ACC000188.

27 <sup>427</sup> Tr. at 39-41, 44, Exh. S-6 at ACC000229.

28 <sup>428</sup> Tr. at 46-47, Exh. S-7 at ACC000188, ACC000190.

28 <sup>429</sup> Tr. at 46-47, Exhs. S-6 at ACC000229, S-7 at ACC000188, ACC000194-195.

The evidence shows that after being sent the Investment Agreement on April 14, 2014, Ms. Horn executed it on the same date and that the Investment Agreement provided her with a 40 percent ownership or 6,957<sup>430</sup> common shares of Biomed, in exchange for a \$325,000 investment.<sup>431</sup> The Investment Agreement stated that payments were to be made via wire transfer to Biomed's bank account at Creditcorp Bank in Panama.<sup>432</sup>

Respondent Hawkins executed the Investment Agreement with Ms. Horn on behalf of Biomed.<sup>433</sup> The evidence shows that on the same date, Respondent Hawkins executed an Addendum to the Investment Agreement with Ms. Horn that stated, as the principal for Biomed he would commit to providing her with full restitution for the dollars she invested.<sup>434</sup> The Addendum also set forth a funding schedule, in which Ms. Horn was to make her investments in installments, and states that the first payment was \$165,000.<sup>435</sup>

The evidence shows that Ms. Horn made the following investments in Biomed at Respondent Hawkins' request:<sup>436</sup>

Date	Amount
4/14/2014	\$35,000 <sup>437</sup>
4/28/2014	\$65,000 <sup>438</sup>
6/18/2014	\$65,000 <sup>439</sup>
10/8/2014	\$25,000 (sent directly to Respondent Hawkins in Arizona) <sup>440</sup>
10/16/2014	\$18,000 <sup>441</sup>
3/3/2015	\$40,000 <sup>442</sup>

<sup>430</sup> Although the Investment Agreement states that Ms. Horn would receive 6,957 shares of Biomed, the evidence shows that Ms. Horn received 6,962 shares. See, Exhibits S-14 and S-20.

<sup>431</sup> Tr. at 48, Exh. S-8.

<sup>432</sup> Tr. at 49-50, Exh S-8 at ACC000196.

<sup>433</sup> Tr. at 49, Exh. S-8 at ACC000197.

<sup>434</sup> Tr. at 50, Exh. S-8 at ACC000198.

<sup>435</sup> Ex. S-8 at ACC000198.

<sup>436</sup> Tr. at 40.

<sup>437</sup> Tr. at 52, Exhs. S-9, S-11, S-13.

<sup>438</sup> Tr. at 59, Exh. S-13.

<sup>439</sup> Tr. at 61-63, 65-66, Exhs. S-15, S-16, S-17.

<sup>440</sup> Tr. at 67, 68-70, 81, 100-102, Exhs. S-19, S-20, S-21, S-36.

<sup>441</sup> Tr. at 71-72, 74-75, 78, Exhs. S-22, Exh. S-23, S-24, S-25.

<sup>442</sup> Tr. at 86, Exh. S-29 at ACC000210.



1 The evidence also shows that Ms. Horn made additional investments in Biomed and that,  
2 ultimately, Ms. Horn provided investment funds totaling \$283,630 to Biomed.<sup>443</sup>

3 Based on the above facts, we find that Respondent Hawkins and Biomed offered and sold shares  
4 of Biomed stock in the form of securities within or from Arizona.

### 5 **c. Registration Violations**

6 Here, the evidence shows that Respondent Hawkins has not been registered with the  
7 Commission to sell securities since his registration was revoked as part of the 2007 Consent Order.<sup>444</sup>  
8 The evidence also shows that Biomed attempted to register with the Commission and listed Respondent  
9 Hawkins' name and home address as its business address, but that Biomed never completed its  
10 registration.<sup>445</sup> Further, the evidence shows that Biomed was never registered or licensed with the  
11 Commission as a securities salesman or dealer or investment advisor and its stock was never registered  
12 as a security.<sup>446</sup>

13 Based on our finding that Respondent Hawkins and Biomed participated in the sale of securities  
14 in the form of Biomed stock within or from Arizona, we also find that Respondent Hawkins and  
15 Biomed violated A.R.S. § 44-1841(A) by failing to register Biomed's stock as a security and for failing  
16 to register as salesmen or dealers in violation of A.R.S. 44-1842(A). Respondent Hawkins and/or  
17 Biomed did not allege that Biomed's stock was exempt from registration under A.R.S. § 44-2033 and  
18 therefore, we find that Biomed's stock was not exempt.

## 19 **E. Anti-Fraud Violations**

### 20 **1. Division's Position**

21 The Division alleges that Respondent Hawkins and Biomed made misleading and false  
22 statements and omissions to Ms. Horn regarding Respondent Hawkins' relationship to Biomed.<sup>447</sup> The  
23 Division asserts that Respondent Hawkins held himself out as a founder and principal of Biomed, while  
24 omitting that he was prohibited from exercising control over any entity that offers or sell securities  
25

26 <sup>443</sup> Tr. at 37-38, 76-86, 93, 95-96, 165, 199, Exhs. S-21, S-22, S-23, S-24, S-25, S-26, S-27, S-28, S-29, S-32, S-33 at  
ACC000181-182, S-37 at ¶ 28, S-38.

27 <sup>444</sup> Exh. S-2.

28 <sup>445</sup> Tr. at 33.

<sup>446</sup> Tr. at 34, Exh. S-1.

<sup>447</sup> Division's Post-Hearing Brief at 13-15.

1 within or from Arizona pursuant to the 2007 Consent Order.<sup>448</sup> The Division asserts Respondent  
 2 Hawkins drafted and provided offering documents to Ms. Horn which stated he was a founder and  
 3 principal of Biomed.<sup>449</sup> The Division asserts that Respondent Hawkins executed the Investment  
 4 Agreement and Addendum representing himself as a principal of Biomed and on Biomed's behalf.<sup>450</sup>

5 The Division claims that Respondent Hawkins' explanation regarding his authority as a  
 6 principal of Biomed, is not credible when he stated he was "treated" as a principal, but did not have the  
 7 authority of a principal.<sup>451</sup> The Division asserts that Respondent Hawkins admitted that he was one of  
 8 the three original partners of Biomed; that if he was a principal, he misled Ms. Horn about his authority  
 9 to act as a principal due to the prohibition to do so in the 2007 Consent Order; and if he was not a  
 10 principal of Biomed his statements to Ms. Horn were false.<sup>452</sup>

11 The Division also alleges that Respondent Hawkins omitted disclosing to Ms. Horn that he was  
 12 prohibited from selling securities at the time Respondent Hawkins participated in the sale of Biomed  
 13 stock and executed the Investment Agreement and Addendum in violation of the 2007 Consent  
 14 Order.<sup>453</sup>

15 The Division further contends that Respondent Hawkins misled Ms. Horn with the personal  
 16 guarantee he executed in the Addendum, because his guarantee was meaningless given that he still  
 17 owed over \$1 million in restitution under the 2007 Consent Order.<sup>454</sup>

18 The Division alleges that Respondent Hawkins' misleading misstatements and omissions were  
 19 material and would be significant to a reasonable buyer.<sup>455</sup> The Division asserts that Respondent  
 20 Hawkins' misleading statements regarding his personal guarantee were material because he was  
 21

22 <sup>448</sup> Division's Post-Hearing Brief at 14.Tr. at 27-29, 181-182, Exhs. S-4 at 4-9, S-37 at ¶ 6, S-38.

23 <sup>449</sup> Division's Post-Hearing Brief at 14.Tr. at 44-46, 156-157, 159, Exhs. S-6 at ACC000229, S-7at ACC000188, S-8 at ACC000198.

24 <sup>450</sup> Division's Post-Hearing Brief at 14.Tr. at 49, Exhs. S-8, S-37 at ¶ 24, S-38.

25 <sup>451</sup> Division's Post-Hearing Brief at 14, Tr. at 193-196.

26 <sup>452</sup> Division's Post-Hearing Brief at 15.

27 <sup>453</sup> Division's Post-Hearing Brief at 15, Tr. at 27-29, 181-182, Exhs. S-4 at 4-9, S-37 at ¶ 6, S-38.

28 <sup>454</sup> Division's Post Hearing Brief at 17.

<sup>455</sup> Division's Post Hearing Brief at 16-17. See also, *Hirsh v. Arizona Corp. Comm'n*, 237 Ariz. 456, 463 ¶27 (App 2015) (citing *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 445 (1976); *Denver Energy Expl., LLC v. Arizona Corp. Comm'n*, 2016 WL 4916776, at \*3 (Ariz. Ct. App. Sept. 15, 2016); *United States v. Bachynsky*, 415 F. App'x 167, 172 (11<sup>th</sup> Cir. 2011); *Sec. & Exch. Comm'n v. Desai*, 145 F. Supp. 3d 329, 336 (D.N.J. 2015); *Sec. & Exch. Comm'n v. Universal Serv. Ass'n*, 106 F.2d 232, 239 (7<sup>th</sup> Cir. 1939); *Strom v. Black*, 22 Ariz. App. 102, 105 (1974); *Sec. & Exch. Comm'n v. Riel*, 282 F.Supp. 3d 499, 519-20 (N.D.N.Y. 2017).

insolvent, due to the unpaid restitution under the 2007 Consent Order.<sup>456</sup>

The Division also alleges that scienter is not a necessary element to prove a violation under A.R.S. § 44-1991(A)(2).<sup>457</sup> The Division asserts that Respondent Hawkins acted as the control person for Biomed and that as such he is liable for violations of A.R.S. § 44-1991(B) to the same extent as Biomed.<sup>458</sup>

## 2. Respondent Hawkins' Position

Respondent Hawkins contends that he was not the founder or principal of Biomed.<sup>459</sup> Respondent Hawkins asserts that Mr. Maxfield was the only principal and founder of Biomed and that Mr. Maxfield would have testified to that fact if his testimony had been allowed.<sup>460</sup> Respondent Hawkins also contends that Ms. Horn knew that he was not the founder of Biomed through their conversations.<sup>461</sup>

Respondent Hawkins asserts that Ms. Horn knew about the 2007 Consent Order, he gave her a copy of it, that they reviewed it together and that they discussed it.<sup>462</sup> Respondent Hawkins contends that based on their discussion regarding the 2007 Consent Order Ms. Horn knew he couldn't be the principal of a company and that she knew he could not sell securities.<sup>463</sup>

Respondent Hawkins disputes the Division's claim that he did not disclose to Ms. Horn that his personal guarantee was meaningless. Respondent Hawkins asserts that Ms. Horn was aware of his finances, income, and debt and that she did not care; she only wanted to help "the man she loved and planned to marry."<sup>464</sup> Respondent Hawkins argues that if the Division had required Ms. Horn to appear for the hearing or if he had been able to subpoena her, Ms. Horn would have testified to the fact that she knew about his finances, income and debt "before she made the **investment**" (emphasis added).<sup>465</sup>

Respondent Hawkins disputes Investigator Gerdes' testimony that Ms. Horn was stressed about

<sup>456</sup> Division's Post-Hearing Brief at 18. Tr. at 30-32, 117, Exh. S-5.

<sup>457</sup> Division's Post-Hearing Brief at 18. See also, *Garvin v. Greenbank*, 856 F.2d 1392, 1398 (9<sup>th</sup> Cir. 1988).

<sup>458</sup> Division's Post-Hearing Brief at 18-19.

<sup>459</sup> Respondent's Response Brief at 11.

<sup>460</sup> *Id.*

<sup>461</sup> *Id.*

<sup>462</sup> *Id.*

<sup>463</sup> *Id.*

<sup>464</sup> *Id.*

<sup>465</sup> *Id.*

her “loan” to Biomed.<sup>466</sup> Respondent Hawkins contends that Ms. Horn was stressed because “her son forced her, under great duress, to agree to file this complaint and to meet with investigators.”<sup>467</sup> Respondent Hawkins also contends that Ms. Horn told him that this is what happened when they “began new phone conversations (initiated by Mary [Ms. Horn]) long after she returned to Louisiana and sold her Arizona house. . . and many months after March of 2015.”<sup>468</sup>

Respondent Hawkins asserts that he made no misstatement or omissions that were material to the transaction with Ms. Horn.<sup>469</sup> Respondent Hawkins also asserts that he made no untrue statement or omissions that were material under A.R.S. § 44-1991.<sup>470</sup> Respondent Hawkins reiterates his claims that Ms. Horn met with Mr. Maxfield and discussed the transaction before it was executed; it was agreed that Ms. Horn would make a loan to the company; that she would receive shares as collateral for the loan; and that if Mr. Maxfield had been allowed to testify, he would have confirmed the actions taken.<sup>471</sup> Respondent Hawkins acknowledges that he did a “poor job” in drafting the Investment Agreement and Addendum because they did not fully explain the transaction between Ms. Horn and Biomed.<sup>472</sup> Respondent Hawkins contends that Biomed would not have paid back a portion of the loan and Ms. Horn returned shares to Biomed if there was no loan.<sup>473</sup>

Regarding violations of A.R.S. § 44-1999, Respondent Hawkins asserts that he was not a control person for Biomed; Mr. Maxfield would have testified that Mr. Maxfield was the control person, if he had been allowed to testify; and that Respondent Hawkins did not act alone in the transaction with Ms. Horn.<sup>474</sup>

### 3. Resolution

A.R.S. § 44-1991(A) states in part that:

It is a fraudulent practice and unlawful for a person, in connection with a transaction or transactions within or from the state involving an offer to sell or buy securities, a sale

<sup>466</sup> Respondent’s Response Brief at 11-12.

<sup>467</sup> Respondent’s Response Brief at 12.

<sup>468</sup> *Id.*

<sup>469</sup> *Id.*

<sup>470</sup> Respondent’s Response Brief at 11.

<sup>471</sup> Respondent’s Response Brief at 12.

<sup>472</sup> *Id.*

<sup>473</sup> *Id.*

<sup>474</sup> Respondent’s Response Brief at 13.

or purchase of securities, including securities exempted under § 44-1843 or 44-1843.01 and including transactions exempted under § 44-1844, 44-1845 or 44-1850, directly or indirectly to do any of the following:

1. Employ any device, scheme or artifice to defraud.
2. Make any untrue statements of material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

The Arizona Supreme Court has held that “as to civil cases, scienter is not an element of a violation of A.R.S. § 44-1991(A)(2), even though it may be an element of A.R.S. § 44-1991(A)(1).”<sup>475</sup> The courts have also held that under A.R.S. § 44-1991(A)(2) “a seller of securities is strictly liable for the misrepresentations or omissions he makes”<sup>476</sup> and has “an affirmative duty not to mislead.”<sup>477</sup>

Further, A.R.S. § 44-1999(B) provides:

Every person who, directly or indirectly, controls any person liable for a violation of § 44-1991 or 44-1992 is liable jointly and severally with and to the same extent as the controlled person to any person to whom the controlled person is liable unless the controlling person acted in good faith and did not directly or indirectly induce the act underlying the action.

Under A.R.S. § 44-1801(17), a person is defined as an “individual, corporation, partnership, . . . limited liability company. . .”.

Arizona courts have interpreted A.R.S. § 44-1999, “as imposing presumptive control liability on persons who have the power to directly or indirectly control the activities of those persons or entities liable as primary violators of [A.R.S.] §§ 44-1991 and 44-1992.”<sup>478</sup> Further, “[t]he evidence need only show that the person targeted as a controlling person had the legal power, either individually or as part of a control group, to control the activities of the primary violator.”<sup>479</sup>

Here, Respondent Hawkins is not in compliance with the 2007 Consent Order. The evidence shows that Respondent Hawkins has not been registered with the Commission to sell securities since his registration was revoked in 2007.<sup>480</sup> The evidence also shows that Respondent Hawkins still owes

<sup>475</sup> See, *State v. Gunnison*, 127 Ariz. 110, 113 P.2d 604, 607 (1980).

<sup>476</sup> See, *Garvin v. Greenbank*, 856 F.2d 1392, 1398 (9<sup>th</sup> Cir. 1988).

<sup>477</sup> See, *Aaron V. Fromkin*, 196 Ariz. 224, 227 (App. 2000).

<sup>478</sup> *Eastern Vanguard Forex, Ltd. v. Arizona Corp. Comm’n*, 206 Ariz. 399, 412, 79 P.3d 86,99 (App. 2003).

<sup>479</sup> *Id.*

<sup>480</sup> Exh. S-2.



1 more than a \$1 million in restitution under the 2007 Consent Order.<sup>481</sup> As such, Respondent Hawkins  
 2 is prohibited from selling securities in Arizona unless they are registered or exempt and he is prohibited  
 3 from exercising any control over any entity that offers or sells securities within or from Arizona until  
 4 all restitution and administrative penalties are paid in full.<sup>482</sup>

5 Respondent Hawkins testified that the offering documents [provided to Ms. Horn]<sup>483</sup> contained  
 6 a false statement that he is the founder of Biomed.<sup>484</sup> The evidence shows Respondent Hawkins  
 7 provided Ms. Horn with offering documents, he drafted, that listed him as either as the founder or  
 8 principal of Biomed.<sup>485</sup> The evidence also shows that Respondent Hawkins executed the Addendum  
 9 with Ms. Horn on behalf of Biomed and in so doing represented himself as a principal for Biomed.<sup>486</sup>

10 The evidence also shows that Respondent Hawkins acted with authority on behalf of Biomed.  
 11 For example, Respondent Hawkins decided on the number of shares Ms. Horn would receive, the price  
 12 she would pay, set the terms for her investment to be prefunded even though she was investing over  
 13 time and negotiated the terms to buy back shares from Ms. Horn on behalf of Biomed.<sup>487</sup> In another  
 14 instance, Respondent Hawkins sent an email to all shareholders whereby he indicates that a new  
 15 shareholder [Ms. Horn] has been located, that has she agreed to invest \$325,000, that she will be paid  
 16 first, at 100 percent, if Biomed assets need to be liquated and that shareholders should vote by returning  
 17 an attached form to him.<sup>488</sup> Further, the evidence shows that Respondent Hawkins requested and  
 18 directed how and where the investment payments were to be made by Ms. Horn.<sup>489</sup> The evidence also  
 19 shows that Respondent Hawkins was the only person Ms. Horn communicated with regarding  
 20 Biomed.<sup>490</sup>

21 Although the record is replete with evidence showing Respondent Hawkins acted with authority  
 22

23 <sup>481</sup> Tr. at 32, Exh. S-5, showing restitution payments totaling \$128,768.82. Although during testimony Respondent Hawkins  
 24 claimed he had paid more in restitution than is reported in Exh. S-5; he was unable to substantiate his claims and therefore,  
 we do not find his statements regarding additional restitution payments credible. Tr. at 183-186.

<sup>482</sup> Exh. S-4.

<sup>483</sup> Tr. at 44, Exh. S-6, ACC000229, Tr. at 204, Exh. S-7 at ACC000188.

<sup>484</sup> Tr. at 204, Exh. S-7 at ACC000188.

<sup>485</sup> Tr. at 162. See also, Tr. at 44, 46, 156-157, 159, Exhs. S-6 at ACC000229, S-7 at ACC000188, S-8 at ACC000198.

<sup>486</sup> Exhs. S-8, S-37 at ¶23.

<sup>487</sup> Tr. at 96-97, Exh. S-33, S-32.

<sup>488</sup> Tr. at 56-58, Exh. S-18.

<sup>489</sup> Exhs. S-9, S-11, S-13, S-15, S-16, S-17, S-19, S-20, S-21, S-36, S-22, S-23, S-24, S-25, S-29 at ACC000210.

<sup>490</sup> Tr. at 40



1 and control in Biomed's offers to sell its shares to Ms. Horn; the record is void of independent evidence  
2 to support Respondent Hawkins' testimony that he told Ms. Horn his actions on behalf of Biomed were  
3 in violation of the 2007 Consent Order. The evidence shows that Respondent Hawkins omitted telling  
4 Ms. Horn about the 2007 Consent Order before she made her investments, which included that he was  
5 prohibited from selling securities, his registration to sell securities had been revoked, and that he owed  
6 more than \$1 million in restitution.<sup>491</sup> The evidence also shows that once Ms. Horn became aware of  
7 the 2007 Consent Order, she confronted Respondent Hawkins with the information and stopped making  
8 investments.<sup>492</sup> The evidence further shows that after being confronted, Respondent Hawkins misled  
9 Ms. Horn by stating (in an email) that he only owed \$525,000 in restitution under the 2007 Consent  
10 Order.<sup>493</sup> It is also noteworthy that in the same email Respondent Hawkins does not state that he  
11 previously told Ms. Horn about the 2007 Consent Order.<sup>494</sup>

12 Based on the evidence, we find Respondent Hawkins made three false statements by providing  
13 Ms. Horn with two documents stating he was a founder of Biomed and by executing the Addendum on  
14 behalf of Biomed, while representing himself as a principal.

15 We also find that Respondent Hawkins omitted telling Ms. Horn by not disclosing to her prior  
16 to her investment, that under the 2007 Consent Order he was prohibited from exercising control over  
17 any entity that offered or sold securities, his registration to sell securities had been revoked, and that  
18 he owed more than \$1 million in restitution. Additionally, we find that Respondent Hawkins misled  
19 Ms. Horn about the amount of restitution he owes under the 2007 Consent Order.

20 Further, we find that Respondent Hawkins misled Ms. Horn by executing the Addendum, in  
21 which he personally guaranteed he would make best efforts to repay Ms. Horn if Biomed had to  
22 liquidate its assets given the facts that he owed more than \$1 million in restitution, he testified that he  
23 could not find gainful employment since the 2007 Consent Order,<sup>495</sup> and that he had previously filed  
24 for bankruptcy.<sup>496</sup>

25  
26 <sup>491</sup> Tr. at 40.

27 <sup>492</sup> Tr. at 40-41.

28 <sup>493</sup> Tr. at 88, 90-91, Exh. S-30 at ACC000157, S-31.

<sup>494</sup> Tr. at 91.

<sup>495</sup> Tr. at 154-156, 166.

<sup>496</sup> Tr. at 150.

Finally, we find that Respondent Hawkins' misleading and false statements and omissions would be material to the deliberations of a reasonable buyer or investor like Ms. Horn. Therefore, we find Respondent Hawkins violated A.R.S. §§ 44-1991 and 44-1991(A)(2) and is strictly liable for the misleading and false statements and omissions described herein. Further, we find that Respondent Hawkins acted as a control person for Biomed and that Biomed is liable, to the same extent as Respondent Hawkins for its actions in the sale of unregistered securities in violation of A.R.S. § 44-1999(B).

## **F. Remedies**

### **1. Division's Position**

#### **a. Restitution**

The Division asserts that Respondents should be required to pay restitution in the amount of \$243,630.<sup>497</sup> The Division contends that Ms. Horn made total payments of \$283,630 to purchase Biomed stock and that Respondents have returned only \$40,000 of Ms. Horn's investment money.<sup>498</sup> The Division also argues that because Respondent Hawkins controlled Biomed (within the meaning of A.R.S. § 44-1999) during the time period when Respondent Hawkins sold Biomed stock to Ms. Horn and she made payments, Respondent Hawkins and Biomed should be held jointly and severally, liable for restitution in the amount of \$243,630.

The Division disputes Respondent Hawkins claim that he and Ms. Horn agreed to a reduced restitution or payback amount.<sup>499</sup> The Division asserts that Respondent Hawkins' claim that he and Ms. Horn agreed that she would reduce the amount owed for her investment to \$200,000 is inconsistent with Arizona law.<sup>500</sup> The Division argues that restitution should be calculated by subtracting the \$40,000 repayment Respondent Hawkins made to Ms. Horn from her investment of \$283,630, plus interest.<sup>501</sup>

<sup>497</sup> Division's Post-Hearing Brief at 20. See also, Tr. at 37, 76-86, 93, 95-96, 165, Exhs. S-24, S-25, S-26, S-27, S-28, S-29, S-32, S-33, S-37 at ¶28, S-38.

<sup>498</sup> Division's Post-Hearing Brief at 20.

<sup>499</sup> Division's Reply Brief at 8.

<sup>500</sup> Division's Reply Brief at 8, citing A.A.C R14-4-308 (C), which states if restitution is ordered by the Commission, the amount payable to each purchaser shall include the fair market value of the consideration paid, plus interest, less any repayments.

<sup>501</sup> Division's Reply Brief at 8.

1                   **2. Respondent's Position**

2           Respondent Hawkins asserts that he did not violate any securities laws and should not be subject  
3 to restitution.<sup>502</sup> He argues that he believes he is obligated to pay back the "loan" to Ms. Horn based  
4 on his personal guarantee in the Addendum.<sup>503</sup> Respondent Hawkins contends that before Biomed  
5 made the \$40,000 payment and received 20 percent of the shares in return, Ms. Horn agreed that she  
6 would reduce the amount owed to \$200,000 rather than the \$243,630.<sup>504</sup> Respondent Hawkins contends  
7 that by making a payment of \$40,000, or 20 percent of \$200,000, Ms. Horn agreed to return 1,392, or  
8 20 percent, of her Biomed shares in return.<sup>505</sup> Respondent Hawkins claims that under the agreement  
9 with Ms. Horn he now owes her \$160,000.<sup>506</sup>

10                   **3. Analysis/Resolution**

11           A.R.S. § 44-2032 provides, in pertinent part:

12  
13           If it appears to the [C]omission, either on complaint or otherwise, that any person has  
14 engaged in, is engaging in or is about to engage in any act, practice or transaction that  
15 constitutes a violation of this chapter, or any rule or order of the [C]omission under this  
16 chapter, the [C]omission, in its discretion may:

17           1.       Issue an order directing such person to cease and desist from engaging in the act,  
18 practice or transaction, or doing any other act in furtherance of the act, practice or  
19 transaction, and to take appropriate affirmative action within a reasonable period of  
20 time, as prescribed by the [C]omission, to correct the conditions resulting from the act,  
21 practice or transaction including, without limitation, a requirement to provide restitution  
22 as prescribed by rules of the [C]omission. . .

23           Here, we have found that Respondent Hawkins and Biomed acted as unregistered dealers or  
24 salesmen in the offer and sale of unregistered securities to Ms. Horn in violation of A.R.S. §§ 44-1841,  
25 44-1842 and 44-1991 and that Respondent Hawkins acted as a control person for Biomed.

26           The record does not support Respondent Hawkins' claim that he and Ms. Horn agreed to a  
27 reduced amount of investment funds to be paid back. The evidence shows that in an email dated June  
28 3, 2015, Respondent Hawkins proposed a reduced amount of \$200,000 to be paid back by him and

26           <sup>502</sup> Respondent's Response Brief at 13.

27           <sup>503</sup> *Id.*

28           <sup>504</sup> *Id.*

<sup>505</sup> *Id.*

<sup>506</sup> *Id.*

Biomed; however, there is no evidence in the record that Ms. Horn agreed to that proposal.<sup>507</sup> In fact, in response to the email Ms. Horn stated that “fingers crossed that you [Respondent Hawkins] will be successful in obtaining additional funding to buy *all* of my shares (emphasis added).” Therefore, we find that the record does not establish that Ms. Horn agreed to any reduced amount owed, and even if she had it would be inconsistent with Arizona law.<sup>508</sup> Based on these facts, we find that Respondent Hawkins and Biomed are jointly and severally, liable for restitution in the amount of \$243,630, pursuant to A.R.S. § 44-1999(B).

**b. Administrative Penalties**

**i. Parties’ Positions**

The Division alleges that Respondents violated A.R.S. §§ 44-1841(A) and 44-1842(A) by offering and selling unregistered securities in the form of Biomed stock to Ms. Horn, while not being registered with the Commission as a salesman or dealer.<sup>509</sup> The Division also alleges that Respondents committed at least three violations of A.R.S. § 44-1991, by making misleading representations to Ms. Horn.<sup>510</sup> Because Respondent Hawkins acted as a control person of Biomed, the Division argues that Hawkins and Biomed should be held jointly and severally, liable for administrative penalties in the amount of \$25,000.<sup>511</sup>

Respondent Hawkins asserts that he did not violate any securities laws and therefore should not be subject to administrative penalties.<sup>512</sup>

**ii. Analysis/Resolution**

Pursuant to A.R.S. § 44-2036(A), “[a] person who, in an administrative action, is found to have violated any provision of this chapter or any rule or order of the commission may be assessed an administrative penalty by the commission, after a hearing, in an amount of [sic] not to exceed five thousand dollars for each violation. . .”.

Here, we have found that Respondents violated A.R.S. § 44-1991 by making three false

<sup>507</sup> Exh. S-34 at ACC000179.

<sup>508</sup> A.A.C R14-4-308 (C), which states if restitution is ordered by the Commission, the amount payable to each purchaser shall include the fair market value of the consideration paid, plus interest, less any repayments.

<sup>509</sup> Division’s Post-Hearing Brief at 20.

<sup>510</sup> *Id.*

<sup>511</sup> *Id.*

<sup>512</sup> Respondent’s Response Brief at 13.

statements, two misleading statements and an omission that were material to their transaction with Ms. Horn as discussed *supra*. Therefore, we find that it is appropriate to impose administrative penalties in the amount of \$30,000 and we will so order.

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

\* \* \* \* \*

### **FINDINGS OF FACT**

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Act.<sup>513</sup>

2. William Melvin Hawkins ("Respondent Hawkins") has been a resident of Arizona at all relevant times.<sup>514</sup>

3. From January 2014 to March 2015, Respondent Hawkins was physically in Arizona at almost all times.<sup>515</sup>

4. At various times, Respondent Hawkins was registered with the Commission as a securities salesman in association with various securities dealers.<sup>516</sup>

5. On February 1, 2007, the Commission issued an Order to Cease and Desist, Order of Restitution, Order of Revocation, Order of Administrative Penalties, and Consent to Same ("2007 Consent Order") in the matter of William Melvin Hawkins and Meta Funding, LLC, Docket No. S-20470A-06-0531.<sup>517</sup>

Pursuant to the 2007 Consent Order, the Commission:

- Ordered Hawkins to cease and desist from violating the Securities Act;
- Revoked Hawkins' salesman registration;
- Ordered Hawkins to pay \$1,284,900 in restitution and \$25,000 in administrative penalties;
- Ordered Hawkins to refrain from selling securities in or from Arizona unless both he and the securities were registered with the Commission; and
- Ordered that Hawkins could not exercise any control over an entity that offers or sells securities within or from Arizona, until he had fully paid the restitution and penalties

<sup>513</sup> Notice ¶ 1.

<sup>514</sup> Notice ¶ 2, Tr. at 7.

<sup>515</sup> Tr. at 101-103, Exh. S-36 at ACC000349-73, ACC000554-602.

<sup>516</sup> Notice ¶ 3, Tr. at 181, Exhs. S-37 at ¶ 3, S-38.

<sup>517</sup> Notice ¶ 4. *See*, Decision No. 69291 (February 1, 2007).

imposed by the Consent Order.<sup>518</sup>

6. Respondent Hawkins has paid \$128,666.82 in restitution and penalties ordered under the 2007 Consent Order.<sup>519</sup>

7. Respondent Hawkins has not been registered or licensed with the Commission in any capacity since his registration was revoked under the 2007 Consent Order.<sup>520</sup>

8. Biomed is a corporation organized under the laws of the country of Panama in 2008.<sup>521</sup>

9. Biomed has never been registered or licensed with the Commission in any capacity.<sup>522</sup>

10. A 2015 filing on Commission's eCorp indicates that Biomed's Arizona address was Respondent Hawkins' home address.<sup>523</sup>

11. Respondent Hawkins held himself out as a founder and/or principal of Biomed.<sup>524</sup>

12. Respondent Hawkins told Ms. Horn about Biomed, that he worked at Biomed, and that Biomed was going to produce human growth hormone.<sup>525</sup>

13. Respondent Hawkins told Ms. Horn that he had invested in Biomed.<sup>526</sup>

14. Respondent Hawkins was the only person Ms. Horn had contact with regarding Biomed.<sup>527</sup>

15. Prior to investing, Ms. Horn received offering documents drafted by Respondent Hawkins that included an Investment Agreement and an Addendum.<sup>528</sup>

16. The offering documents stated Biomed was seeking funding and stated that Biomed stock was being offered for sale in exchange for \$325,000.<sup>529</sup>

17. On April 14, 2014, Ms. Horn executed the Investment Agreement, agreeing to invest \$325,000, in exchange for 6,957 shares of Biomed common stock, and Respondent Hawkins executed

<sup>518</sup> Notice ¶ 6, Tr. at 21-22, 26, Exhs. S-4 at 1, S-37 at ¶ 4, S-38.

<sup>519</sup> Tr. at 30-32, 117, Exh. S-5.

<sup>520</sup> Notice ¶ 8, Tr. at 29-30, Exhs. S-2, S-37 at ¶ 8, S-38.

<sup>521</sup> Notice ¶ 9, Tr. at 33-34, 44, Exhs. S-6 at ACC000229, S-37 at ¶ 9, S-38.

<sup>522</sup> Notice ¶ 10, Tr. at 34-35, Exhs. S-1, S-37 at ¶ 10, S-38.

<sup>523</sup> Tr. at 32-33.

<sup>524</sup> Tr. at 44, 46, 156-157, 159, Exhs. S-6 at ACC000229, S-7 at ACC000188, S-8 at ACC000198.

<sup>525</sup> Tr. at 37-39, 157-158, Exhs. S-37 at ¶ 15, S-38 at ¶ III-15-18.

<sup>526</sup> Notice ¶ 16.

<sup>527</sup> Tr. at 40.

<sup>528</sup> Tr. at 39-41, 45-47, 129, 162, Exhs. S-6, S-7 at ACC000194-95, S-8.

<sup>529</sup> Tr. at 44, 46-47, Exhs. S-6 at ACC000230, S-7 at ACC000190.



1 the Investment Agreement on behalf of Biomed.<sup>530</sup>

2 18. Under the Investment Agreement, other than the voting rights associated with her shares  
3 of stock, Ms. Horn had no ability to control or manage the operations of Biomed.<sup>531</sup>

4 19. The Investment Agreement included an Addendum which stated, “[t]he purpose of  
5 this Addendum is to attempt to provide Ms. Horn an additional degree of security in regard to the funds  
6 she is expending to purchase Biomed stock.”<sup>532</sup>

7 20. The Addendum specified that Ms. Horn would make an initial payment of \$165,000,  
8 and that a second payment at the discretion of Hawkins after the first payment had been “exhausted.”<sup>533</sup>

9 21. The Addendum also stated, “Mel Hawkins, principal of Biomed, also commits to make  
10 a [sic] best efforts to repay Ms. Horn personally if liquidation of Biomed assets do not provide a full  
11 restitution of her the dollars she has invested.”<sup>534</sup>

12 22. The Addendum was executed by Ms. Horn and Respondent Hawkins executed the  
13 document on behalf of Biomed.<sup>535</sup>

14 23. Ms. Horn continued to invest in Biomed through March 2015 and ultimately invested a  
15 total of \$283,630.<sup>536</sup>

16 24. Ms. Horn received 6,962 shares of Biomed in exchange for her investment.<sup>537</sup>

17 25. In March 2015, Ms. Horn learned about the 2007 Consent Order, confronted  
18 Respondent Hawkins with the information and stopped investing in Biomed thereafter.<sup>538</sup>

19 26. After being confronted by Ms. Horn about the 2007 Consent Order, Hawkins has  
20 returned only \$40,000 of Ms. Horn’s funds.<sup>539</sup>

21 27. Respondent Hawkins made misleading and false statements and omissions in violation  
22 that would have been material to an investor like Ms. Horn in violation of A.R.S. §§ 44-1991 and 44-

23 <sup>530</sup> Tr. at 48-49, 93, 96, 162, Exhs. S-8, S-32, S-33, S-37 at ¶¶ 19 & 24, S-38 at III 19 & 21 (denying that Hawkins sold the  
24 shares to Ms. Horn).

25 <sup>531</sup> Notice ¶ 20. See, also Tr. at 158, Exhs. S-8 at ACC000196, S-37 at ¶ 20, S-38.

26 <sup>532</sup> Notice ¶ 21. See, also Tr. at 49-50, Exhs. S-8 at ACC000198, S-37 at ¶ 21, S-38 at III 19 & 21-23.

27 <sup>533</sup> Notice ¶ 22. See, also Tr. at 49-50, Exhs. S-8 at ACC000198, S-37 at ¶ 22, S-38 at III 19 & 21-23.

28 <sup>534</sup> Notice ¶ 23. See, also Tr. at 50, Exhs. S-8 at ACC000198, S-37 at ¶ 23, S-38 at III 19 & 21-23.

<sup>535</sup> Notice ¶ 24. See, also Tr. at 49, Exhs. S-8, S-37 at ¶ 24, S-38.

<sup>536</sup> Notice ¶ 28. See also, Tr. at 37, 76, -84, 93, 95-96, 165, Exhs. S-24, S-25, S-26, S-27, S-28, S-29, S-32, S-33, S-38.

<sup>537</sup> Exhs. S-14 and S-20.

<sup>538</sup> Tr. at 40-41, 86-87.

<sup>539</sup> Notice ¶ 29. See also, S-7 at ACC000190, ACC000194-95, S-8, S-33.

1 1991(A)(2).

2 28. Respondent Hawkins acted as a control person for Biomed and Biomed is liable to the  
3 same extent as Respondent Hawkins for their actions in the sale of unregistered securities in violation  
4 of A.R.S. § 44-1999(B).

5 29. These Findings of Fact are based on the Discussion above, and those findings are also  
6 incorporated herein.

7 **CONCLUSIONS OF LAW**

8 1. The Commission has jurisdiction of this matter pursuant to Article XV of the Arizona  
9 Constitution and A.R.S. § 44-1801, *et. seq.*

10 2. The findings contained in the Discussion above are incorporated herein.

11 3. Within or from Arizona, Respondents Melvin Hawkins and Biomed offered to sell  
12 securities in Arizona within the meaning of A.R.S. § 44-1801.

13 4. Respondents failed to meet their burden of proof pursuant to A.R.S. § 44-2033 to  
14 establish that the securities offered were exempt from registration under the Act.

15 5. Respondents Melvin Hawkins and Biomed violated A.R.S. § 44-1841 by offering and  
16 selling unregistered securities in Arizona that were not exempt from registration.

17 6. Respondents Melvin Hawkins and Biomed violated A.R.S. § 44-1842 by offering  
18 securities in Arizona while not being registered as dealers or salesmen.

19 7. Respondents Melvin Hawkins and Biomed committed fraud in the offer of securities, in  
20 violation of A.R.S. § 44-1991, in the manner described herein.

21 8. Respondent Melvin Hawkins directly or indirectly controlled Biomed, within the  
22 meaning of A.R.S. § 44-1999, and is jointly and severally liable with Respondent Biomed for violations  
23 of A.R.S. § 44-1991.

24 9. The conduct of Respondents Melvin Hawkins and Biomed is grounds for a cease and  
25 desist order pursuant to A.R.S. § 44-2032.

26 10. The conduct of Respondents Melvin Hawkins and Biomed constitutes grounds for an  
27 order of restitution pursuant to A.R.S. § 44-2032 and A.A.C. R14-4-308 and should be jointly and  
28 severally liable.

11. The conduct of Respondents Melvin Hawkins and Biomed is grounds to order administrative penalties pursuant to A.R.S. § 44-2036 and should be jointly and severally liable subject to the limitations of A.R.S. § 44-1999.

**ORDER**

IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2032, Respondents William Melvin Hawkins and Biomed Pharma Group, Inc. shall permanently cease and desist from their actions, as described above, in violation of A.R.S. §§ 44-1841, 44-1842, and 44-1991.

IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2032, Respondents William Melvin Hawkins and Biomed Pharma Group, Inc., shall be **jointly and severally** make restitution in the amount of \$243,630, payable to the Arizona Corporation Commission within 90 days of the effective date of this Decision. Such restitution shall be made pursuant to A.A.C. R14-4-308, subject to the legal setoffs by the Respondents and confirmed by the Director of Securities.

IT IS FURTHER ORDERED that all ordered restitution payments shall be deposited into an interest-bearing account, if appropriate, until distributions are made.

IT IS FURTHER ORDERED that the ordered restitution shall bear interest at the rate of the lesser of 10 percent per annum, or at a rate per annum that is equal to one percent plus the prime rate as published by the Board of Governors of the Federal Reserve System in Statistical Release H.15, or any publication that may supersede it, on the date that the judgment is entered.

IT IS FURTHER ORDERED the Commission shall disburse the restitution funds to the investor shown on the records of the Commission. Any restitution funds that the Commission cannot disburse to an investor because the investor is deceased, or that the Commission determines it is unable to or cannot feasibly disburse, shall be transferred to the general fund of the State of Arizona.

IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2036, Respondent William Melvin Hawkins and Biomed Pharma Group, Inc., shall be jointly and severally shall pay to the State of Arizona administrative penalties in the amount of \$30,000 for violations of A.R.S. § 44-1991, as a result of the conduct set forth in the Findings of Fact and

1 Conclusions of Law.

2 IT IS FURTHER ORDERED that all administrative penalties shall be payable by either  
3 cashier's check or money order payable to "the State of Arizona" and presented to the Arizona  
4 Corporation Commission for deposit in the general fund for the State of Arizona.

5 IT IS FURTHER ORDERED that the payment obligations for these administrative penalties  
6 shall be subordinate to the restitution obligations ordered herein and shall become immediately due and  
7 payable only after restitution payments have been paid in full or upon Respondents' default with respect  
8 to Respondents' restitution obligations.

9 IT IS FURTHER ORDERED that if Respondents fail to pay the administrative penalties  
10 ordered hereinabove, any outstanding balance plus interest, at the rate of the lesser of ten percent *per*  
11 *annum* or at a rate *per annum* that is equal to one percent plus the prime rate as published by the Board  
12 of Governors of the Federal Reserve System in Statistical Release H.15 or any publication that may  
13 supersede it on the date that the judgment is entered, may be deemed in default and shall be immediately  
14 due and payable, without further notice.

15 IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order, any  
16 outstanding balance shall be in default and shall be immediately due and payable without notice or  
17 demand. The acceptance of any partial or late payment by the Commission is not a waiver of default  
18 by the Commission.

19 IT IS FURTHER ORDERED that default shall render Respondents liable to the Commission  
20 for its cost of collection and interest at the maximum legal rate.

21 IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order, the  
22 Commission may bring further legal proceedings against the Respondent(s) including application to  
23 the Superior Court for an order of contempt.

24 IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order, the  
25 Commission may bring further legal proceedings against the Respondent(s) including application to  
26 the Superior Court for an order of contempt.

27 IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-1974, upon application the  
28 Commission may grant a rehearing of this Order. The application must be received by the Commission

at its offices within twenty (20) calendar days after entry of this Order. Unless otherwise ordered, filing an application for rehearing does not stay this Order. If the Commission does not grant a rehearing within twenty (20) calendar days after filing the application, the application is considered to be denied. No additional notice will be given of such denial.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

*Lea M. Peterson*

CHAIRWOMAN MARQUEZ PETERSON

*Jason W. Kennedy*

COMMISSIONER KENNEDY

*Justin Olson*

COMMISSIONER OLSON

*Anna Tovar*

COMMISSIONER TOVAR

*James W. O'Connor*

COMMISSIONER O'CONNOR



IN WITNESS WHEREOF, I, MATTHEW J. NEUBERT, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 5 day of November 2021.

*Matthew J. Neubert*  
MATTHEW J. NEUBERT  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_  
YBK(gb)



1 SERVICE LIST FOR: WILLIAM MELVIN HAWKINS a.k.a. MEL HAWKINS and BIOMED  
2 PHARMA GROUP, INC.

3  
4 DOCKET NO.: S-21091A-19-0332  
5

6 William M. Hawkins  
7 15799 N. Bonow Dr.  
8 Surprise, AZ 85374

9 Mark Dinell, Director  
10 Securities Division  
11 ARIZONA CORPORATION COMMISSION  
12 1300 West Washington Street  
13 Phoenix, AZ 85007  
14 [SecDivServicebyEmail@azcc.gov](mailto:SecDivServicebyEmail@azcc.gov)

15 **Consented to Service by Email**  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28